RECORD, CASE No. 13,275.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No. 217.

THOMAS J. FISHER, APPELLANT,

vs.

J. RANDOLPH TUCKER ET AL.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED OCTOBER 12, 1888.

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1 *Bill of Complaint. Filed Jan. 23, '85. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
JOHN R. TUCKER *et al.*, Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

To the supreme court of the District of Columbia, holding an equity court for said District:

The plaintiff complains as follows:

1. The plaintiff is a citizen and resident of the District of Columbia.

2. The defendants are John R. Tucker, M. C. and Laura Tucker, his wife; H. Tudor Tucker, Fanny Bland Graham, and J. R. Graham, her husband; Mary T. Magill, Evelina Powell, and W. L. Powell, her husband; Virginia Edwards, and John E. Edwards, her husband; Elizabeth Dallas Tucker, widow of David H. Tucker; Virginia B. Tucker, Dallas Tucker, and Hattie A. Tucker, his wife; Cassie D. Brown, and John Thompson Brown, her husband; John R. Tucker, Emma B. Tucker, Evelina T. Lucas, and D. B. Lucas, her husband; Nannie S. McLaughlin, and I. Fairfax McLaughlin, her husband; St. George Tucker Brooke, and Mary B. Brooke, his wife; Frank J. Brooke, and Gay Bentley Brooke, his wife; D. Tucker Brooke, and Lucy Higgins Brooke, his wife; Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, and Everett W. Bedinger, her husband; Elizabeth Gilmer Tucker, widow and devisee of St. George Tucker; Walker Gilmer Tucker, and Lizzie Edwards Tucker, his wife; Evelina Tucker, Lucy Richardson, and Robert B. Richardson, her husband; Annie Tyler, and Lyon G. Tyler, her husband; Eliza Taylor Tucker, widow and sole devisee of Alfred B. Tucker; Alfred B. Tucker, the last named, an infant under the age of twenty-one years; Cynthia B. T. Coleman, and Charles W. Coleman, her husband; B. St. George Tucker, and Eliza C. Tucker, his wife; Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, and William Francis Peyton Tucker, the last two named being infants under the age of twenty-one years; John R. Bryan, Delia Page, and John R. Page, her husband; Fanny Carmichael and S. W. Carmichael, Georgia B. Grinnan, and A. G. Grinnan, her husband; John R. Bryan, Jr., and Margaret R. Bryan, his wife; St. George Tucker C. Bryan, Joseph Bryan, and Isabel S. Bryan, his wife; C. B. Bryan, and Mary S. C. Bryan, his wife; Fanny Bland Brown, and H. Peronneau Brown, her husband; Virginia C. Braxton, St. George Tucker Coalter, all of the above named being residents of the State of Virginia; also Beverly Tucker, and Jane S. Tucker, his wife, residents of the State of West Virginia; also Ada B. Lewis Tucker and Virginia Tucker, an infant under the age of twenty-one years; Virginia Lewis Tucker, widow of B.

2

3

M. B. Tucker; Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, of Texas, the last three named being infants under the age of twenty-one years, and the above named embracing all the heirs of Thomas Tudor Tucker, deceased.

3. The plaintiff is informed and believes that on the 10th day of April, 1818, one Thomas Tudor Tucker was the legal owner and in possession of the following-described premises, situated in
4 the city of Washington and District of Columbia, to wit: All of square one hundred and fifty-one (151), as platted in the original division of said city, and continued to be the owner and possessor of said premises until his death in the year 1828.

4. That in the year 1837, the city taxes for several previous years not having been paid thereon by any one, the said square was sold for the payment of said taxes, and was purchased at said sale by one Joseph Abbott, and in 1840 a deed was made therefor to said Abbott by "the mayor, board of aldermen, and board of common council of the city of Washington," a municipal corporation, a copy of which is hereto attached, marked Exhibit A, and is made part of this complaint.

5 EXHIBIT A.

Exhibit A. Filed Jan. 23rd, '85. R. J. Meigs, clerk. Liber W. B. No. 83, fol. 256.

Corpor'n of Washington to Joseph Abbott. } Deed: Recorded 2nd November, 1840.

This indenture made this second day of November, in the year of our Lord one thousand eight hundred and forty, between the mayor, board of aldermen, and board of common council of the city of Washington, of the first part, and Joseph Abbott, of the same place, of the second part:

Whereas the said corporation, by virtue of the powers in them vested by their charter, have from time to time laid and imposed certain annual taxes in all the real and personal assessable property within the said city, agreeably to the several assessments thereof, and have by sundry acts providing for the collection of such taxes enacted that whenever — two or more years on real property, whether improved or unimproved, in the city of Washington shall remain due and unpaid, or whenever any special tax or any real property shall remain unpaid for two or more years after
6 the same shall have become due, it shall be the duty of the collector in whose hands such taxes may be placed for collection to sell such real property or so much thereof, not less *that* a lot (when the property on which the tax has accrued is not less than that quantity), as may be necessary to pay any such taxes, with all legal cost and charges thereon, at public sale, to satisfy the said corporation thereof, subject, however, to the terms, conditions, provisos, and restrictions as are in said acts mentioned, first giving such notice of the time and place for the sale as said acts *regain;* and whereas the

whole of square number one hundred and fifty-one, lying and being within the said city, became chargeable, as the property and in the name of Thomas J. Tucker's heirs, with the following taxes—that is to say, for the years 1832, 1833, 1834, 1835, and 1836, the sum of thirty-eight dollars and seventy-six cents;

And whereas, the property before described having become liable to be sold under the act in part above quoted, William W. Billing, the collector in whose hands the said taxes were placed
7 for collection, failing to collect them in any other way, after having previously given public notice for the sale by advertisement thereof twelve successive weeks next before the day of sale in the National Intelligencer, a newspaper printed on the city of Washington, therein describing as above the said property, to whom assessed at the time of such advertisement, the said amount of taxes due, and the years for which the same were due, did offer for sale, at public auction, on the fourth day of November, A. D. 1837, all of said square to pay the taxes aforesaid and the expenses attending the sale, when the said Joseph Abbott, being the highest bidder, became the purchaser thereof for the sum of two hundred and fifty dollars, and then paid to the said collector the taxes aforesaid and the expenses of said sale, amounting to forty-one dollars and six cents, and more than two years having elapsed since the day of said sale and the said property not having been redeemed as by law provided, the said party of the second part has paid the residue of the purchase-
8 money, with interest thereon, amounting to two hundred and seventeen dollars and sixty cents, into the city treasury and has become entitled to a conveyance thereof:

Now, therefore, this indenture witnesseth that the said mayor, board of aldermen, and board of common council, parties of the first part, in consideration of the premises and of the sum of one dollar, current money, to them in hand paid by the said party of the second part at or before the sealing and delivery of these presents, the receipt of which is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, and sell, unto the said party of the second part, his heirs and assigns forever, all the said herein-described square number one hundred and fifty-one, with the appurtenances; to have and to hold the said premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their use.

In testimony whereof the mayor of the said city hath here-
9 unto set his hand and caused the seal of the said corporation to be affixed on the day and year first above written.

[Seal of Corporation.]

W. W. SEATON, *Mayor.*

Attest: C. H. WILTBERGER, *Reg.*

DISTRICT OF COLUMBIA, } *sct:*
Washington County, }

Be it remembered that on this second day of November, in the year of our Lord one thousand eight hundred and forty, before the

subscribers, two justices of the peace in and for the county of Washington, personally appears William W. Seaton, Esq., mayor of the city of Washington, and acknowledges the foregoing indenture or instrument of writing to be the act and deed of the mayor, board of aldermen, and board of common council of the city of Washington, delivered for the uses and purposes therein expressed.

H'Y NAYLOR, *J. P.*
C. H. WILTBERGER, *J. P.*

10 Indorsement. Paid $1.75.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber W. B. No. 83, fol. 256 *et seq.*, one of the land records of this office.

Washington, D. C., April 3, 1872.

[SEAL.]

S. WOLF, *Recorder.*
GEO. F. SCHAYER, *Dep.*

Plaintiff avers that the consideration named in said deed—$250—was, on the (2d) second day of November, 1840, paid by said Abbott to said corporation, and the said deed was on said day delivered by said corporation to the said Abbott, and that said Abbott, justly believing that by reason of said payment and deed he
11 had become and was the legal and beneficial owner of said premises, shortly after and within one year from the date of said deed entered into the actual possession of the whole of said premises, claiming to be the sole and exclusive owner thereof by virtue of said sale and deed under which his entry was made.

Plaintiff further avers that since said entry and during all the period from the year 1841 to the time of filing this bill the said Joseph Abbott and his grantees, who have from time to time, by conveyances in due form of law purporting to convey the legal title thereto, derived *little* from him to said premises or some portion thereof, have remained and been in the quiet, peaceable, open, notorious, and continuous adverse possession thereof, claiming during all said period the complete legal and beneficial ownership thereof as against all persons whomsoever; that during all said period the city taxes from time to time levied upon said property have been assessed to said Abbott and his grantee and those deriving title from him as above described, and they have paid with-
12 out default all taxes levied thereon by the United States or by any municipal corporation created by them or acting under their authority. Plaintiff further avers that at the time of the said tax sale and conveyance the said premises were of little value, but by reason of the growth of the city in its direction said square has improved in value, and in 1872 the price paid by J. M. Latta, trustee, for the lots conveyed him was $23,864, which was their full value; and that during all the period above mentioned, from 1841 to the filing of this bill, plaintiff is informed and believes that the title of said Abbott and his grantees thereto was not disputed, and that no claim to any portion of the said premises was after that date (1841) made by any of the heirs of said Tucker or

by any person or persons other than the said Abbott and his grantees and successors in interest.

Plaintiff further avers that said Abbott (who died in the year 1861) by his will executed in due form of law bequeathed all his es-
13 tate to his wife, Elizabeth E. Abbott, for life, with full power to sell and convey square 151 in fee; that said Elizabeth E. Abbott by her deed conveyed said square to Alexander J. Perry on the 24th day of August, 1863; that the said Alexander J. Perry and Josephine A. Perry, his wife, by their deed, on the 2d day of April, 1868, conveyed square 151 to Henry A. Willard; that on the 4th day of June, 1872, said Henry A. Willard and his wife, by their deed, conveyed lots 17, 18, 19, 23, 24, and 27 to 149, both inclusive, of Willard's subdivision of square 151, to James M. Latta, trustee, in trust according to the terms of a certain printed paper in said deed referred to; that on the same day said James M. Latta, trustee, executed a deed of trust to M. F. Morris and Hallet Kilbourn embracing said sublots to secure $18,864 to H. A. Willard; that said James M. Latta, trustee, having made default, the said premises were sold by the trustees under the last above referred to deed of trust to Noah L. Jeffries, trustee for Thomas Sunderland and Curtis J. Hill-
yer, and on the 1st day of October, 1877, duly conveyed
14 said lots to said Jeffries, trustee, &c.; that on the 24th day of February, 1881, said N. L. Jeffries, trustee, by his deed, conveyed the last above described lots to John B. Alley, and on the 18th day of June, 1884, said John B. Alley conveyed to William Sharon all of said sublots, and on the 24th day of June, 1884, said William Sharon conveyed to this plaintiff sublots 17, 18, 19, 23, 24, and 27 to 45, both inclusive, in square 151, the title to which said lots still continues to be in him; and plaintiff avers that each of said conveyances was in due form of law to pass and did pass to the several grantees all of the title of the several grantors therein to the portion of said premises described therein, and that each of the grantees and purchasers above named paid as consideration for the conveyance to him what was at the time a full and fair value of the land so conveyed, and that each of said grantees immediately upon receiving his conveyance entered under the same into the actual possession of the premises described in the conveyance, claiming and
fully believing that he was by virtue thereof the true and
15 legal owner of the same, and held and maintained the peaceable, quiet, actual, visible, and notorious possession thereof during all the period until the sale and conveyance by him, as above stated, in such manner that the possession of said premises of the character above stated has been unbroken and continuous in the said Abbott and those deriving title from him from the year 1841 to the present time; and plaintiff avers that by reason of the facts above stated he is now the sole and exclusive owner and possessor of all that portion of the said square 151 conveyed to him by the said Willaim Sharon as aforesaid.

Plaintiff further avers that while it was the intention of the parties to the tax deed made in 1840, as above recited, that a complete legal title should thereby be vested in the grantee therein, nevertheless

he is advised and believes that in the making of the tax sale upon which said deed was predicated there were certain irregularities, omissions, and defects, by reason of which the said deed was
16 in fact insufficient to vest the legal title in the said Joseph Abbott, the grantee therein, and that, therefore, notwithstanding the sale and deed, the legal title still remained in the heirs of the said Thomas T. Tucker.

Plaintiff further avers that, notwithstanding the defects in said tax proceedings, he is nevertheless, by reason of the long-continued adverse possession of himself and his grantors, as above stated, the actual, legal, and beneficial owner as against all persons whomsoever of the premises conveyed to him as above set forth; but that inasmuch as the facts respecting the adverse possession do not appear of record the apparent legal title, as shown by the record, is outstanding in the heirs of said Thomas T. Tucker; that this apparent title, while thus outstanding, constitutes a cloud upon his own actual title, and that its effect is to seriously embarrass the plaintiff in selling or otherwise disposing of the property, as he is desirous to do; and plaintiff avers that he is without remedy in the premises, except in a court of equity, without the aid
17 of which to remove the said cloud upon his title he is unable to securely enjoy and fully dispose of the said premises.

Plaintiff further avers that the defendants are the descendants and heirs-at-law of Thomas T. Tucker, in whom the apparent outstanding legal title to said premises appears by the record to be vested as a consequence of the supposed invalidity of said tax deed, and that, except the defendants above named, there are no others who, as descendants or heirs of the said Tucker or otherwise, through, from, or under him, have any apparent or possible interest in the said premises.

Plaintiff further avers that Thomas T. Tucker died in the year 1828, leaving a will duly probated in the District of Columbia on the 11th day of July, 1828, by which he constituted his brother St. George Tucker and his brother's sons, Henry St. George and Nathaniel Beverly Tucker, and his son-in-law, Judge John Coalter, his executors. Said St. George Tucker died previous to the decease of said testate. Henry St. George Tucker alone qualified, and
18 he has long since died. By said will, after making certain bequests, the testator stated that it was his "desire that all my property, real and personal, constitute a fund for payment of my debts and legacies; for which purpose I hereby authorize and empower such of my executors as qualify or the survivors of them to sell and dispose of the same and to make a title therefor to the purchasers."

Plaintiff avers that nothing was ever done by the executors or by any one else in execution of the power contained in the will, and, as plaintiff is informed and believes, there never was any attempt by any one to execute the power, nor any application or demand for its execution by any one having any interest therein.

Wherefore the plaintiff prays that as against the defendants herein his title to the said premises may be quieted, and that he

may as against them be decreed to be the sole legal and beneficial owner of the whole of said sublots 17, 18, 19, 23, 24, and 27 to 45, both inclusive, in H. A. Willard's subdivision of square 151,
19 in the city of Washington District of Columbia, and that by further decree each of the defendants herein may be perpetually enjoined from asserting or prosecuting judicially any claim to said premises based upon a derivation of title in any form from the aforesaid Thomas Tudor Tucker, and for such other or further relief as to the court shall seem proper in the premises.

To which end the plaintiff prays for process against each and every defendant named in the second paragraph of this bill, requiring them to appear and answer the exigency of the bill.

The defendants to this bill are John R. Tucker, Laura Tucker, H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dal-
20 las Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, Lucy Higgins Brooke, D. Tucker Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William Francis Peyton Tucker, John R. Byron, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland
21 Brown, H. Perronneau Brown, Virginia C. Braxton, St. George Tucker Coalter, Beverly Tucker, Jane S. Tucker, Ada B. Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, Virginia Tucker, Virginia Lewis Tucker.

HILLYER AND RALSTON,
Solicitors for Thos. J. Fisher, Plaintiff.

22 *Subpœna to Ans.*

In the Supreme Court of the District of Columbia, January 23, 1885.

THOMAS J. FISHER, Complainant, *against* JOHN R. TUCKER *et al.*, Defendants. } No. 9305, Equity Docket 24.

The President of the United States to John R. Tucker, Laura Tucker, H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, J. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor
23 Tucker, Alfred B. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William Francis Peyton Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker C. Bryan, Joseph Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St. George Tucker Coalter, Beverly Tucker, Jane S. Tucker, Ada B. Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, Virginia Tucker, Virginia Lewis Tucker:

You are hereby commanded to appear in this court at its first special term occurring twenty days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By M. A. CLANCY, *Ass't Clerk.*

24 *Marshal's Return, Jan.* 27, 1885.

Served John R. Tucker and Laura Tucker Jan. 26th, 1885, and Beverly Tucker and Jane S. Tucker Jan. 27th, 1885. The balance of the defendants named within not to be found.

CLAYTON McMICHAEL, *Marshal.*

25 *Order for Appearance of Absent Def'ts. Filed Jan. 27, '85. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, 27th January, 1885.

THOMAS J. FISHER
vs.
JOHN R. TUCKER *et al.*, Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

On motion of the plaintiff, by Hillyer and Ralston, his solicitors, it is ordered that the defendants H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker,
Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon
26 G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St. George Tucker Coalter, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court:

A. B. HAGNER,
Asso. Justice.

27 *Decree Pro Confesso Against Beverly, Jane S., John R., & Laura Tucker. Appointment of L. Cabell Williamson as Examiner. Filed Mar. 11th, 1885. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

The defendants Beverly Tucker, Jane S. Tucker, John Randolph

Tucker, and Laura Tucker having been duly served personally with process in the above-entitled cause and having made default, on motion of Hillyer & Ralston, plaintiff's attorneys, it is this 11th day of March, 1885—

Ordered, adjudged, and decreed that the bill of complaint in the above-entitled cause be taken as confessed by the said Beverly Tucker, Jane S. Tucker, John Randolph Tucker, and Laura Tucker, defendants therein; and be it further—

Ordered that L. Cabell Williamson, an examiner of this court, be, and he is hereby, appointed and directed to take testimony herein in support of the allegations of the bill of complaint.

A. B. HAGNER.

28 *Proof of Publication Against Certain Absent Def'ts. Filed Apr. 8th, 1885. R. J. Meigs, Clerk.*

WASHINGTON, D. C., *April* 8, 1885.

Messrs. Hillyer & Ralston to Washington Law Reporter, Dr., 631 F street.

To pub. absent def'ts' notice in case of Thos. J. Fisher *vs.* John R. Tucker *et al.* ---------- $8 00

Rec'd paym't.

JOHN L. GINCK.

(Duplicate.)

O'BRIEN.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

On this 8th day of April, A. D. 1885, personally appeared before me, the undersigned, a United States com'r in and for the District aforesaid, John Smithson, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is the clerk to the publisher of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks as follows: Jan. 31st, Feb. 7th and 14th, 1885.

JOHN SMITHSON.

Sworn and subscribed before me the day and year above written.

[U. S. C. Seal, D. C.]

LUCIAN O'BRIEN,
United States Com'r.

29 In the Supreme Court of the District of Columbia, the 27th Day of January, 1885.

THOMAS J. FISHER
vs.
JOHN R. TUCKER *et al.*, Heirs of Thomas Tudor Tucker. } Equity. No. 9305.

On motion of the plaintiff, by Hillyer & Ralston, his solicitors, it is ordered that the defendants, H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St. George Tucker Brooke, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, Cynthia B. T. Coleman, Charles
30 W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan, Delia Page, John R. Page, Fannie Carmichael, S. W. Carmichael, George B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St. George Tucker Coalter, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, cause their appearance to be entered herein on or before the first rule day occurring forty days after this day; otherwise the cause will be proceeded with as in case of default.

By the court:

A. B. HAGNER,
Asso. Justice.

Test: R. J. MEIGS, *Clerk.*

A true copy.

31 *Decree Pro Confesso Against Certain Defendants. Filed Apr.* 8, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.*, Heirs of T. T. Tucker. } Equity. No. 9305.

Summons having been issued against the hereinafter-named defendants and duly returned "not to be found," and publication

having been duly ordered against the said defendants as absent defendants the 27th day of January, A. D. 1885, and proof of such publication having been made, and the said defendants not having entered their appearance herein, it is, this 8th day of April, A. D. 1885, ordered, adjudged, and decreed that the bill of complaint herein be taken as confessed by the following-named defendants, to wit: H. Tudor Tucker, Fanny Bland Graham, J. R. Graham, Mary T. Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John Thompson Brown, John R. Tucker, Emma B. Tucker, Evelina T. Lucas, D. B.
32 Lucas, Nannie S. McLaughlin, I. Fairfax McLaughlin, St George Tucker Brooke, Mary B. Brooke, Frank J. Brooke' Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fannie B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, John R. Bryan, Delia Page, John R. Page, Fannie Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George Tucker C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fannie Bland Brown, H. Peronneau Brown, Virginia C. Braxton, St. George Tucker Coalter, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker; and be it further—

Stricken out before order made.—Ch. P. James, J.

Ordered that L. Cabell Williamson, an examiner of this court, be, and he is hereby, appointed and directed to take testimony to support the allegations of the bill of complaint herein.

CHARLES P. JAMES,
Justice, &c.

33 *Affidavit of Beverly Tucker as to Minority of Certain Infants. Filed Apr.* 10, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Beverly Tucker, Esq., being first duly sworn, on his oath deposes and says that he is one of the defendants in the above-entitled cause and an heir of Thomas Tudor Tucker, deceased; that Nathaniel

Beverly Tucker and Wm. Francis Peyton Tucker, sons of Thomas S. C. Tucker, deceased, and Virginia Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, children of B. Montague B. Tucker, deceased, are also numbered among said heirs and are infants under the age of twenty-one years and non-residents of the District of Columbia.

BEVERLY TUCKER.

Subscribed and sworn to before me by the said Beverly Tucker this 10th day of April, 1885.

[NOTARIAL SEAL.] A. S. TAYLOR,
Notary Public.

34 *Order Appointing A. A. Brooke Guardian ad Litem for Certain Infant Def'ts, and Revocation of Same. Filed Apr.* 10, '85. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.*, Heirs of T. T. Tucker. } Equity. No. 9305.

It appearing to the court that Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, Virginia Tucker, Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, defendants herein, are infants under the age of twenty-one years and non-residents of the District of Columbia, as is shown by the affidavit of Beverly Tucker herein, it is this 10th day of April, 1885—

Ordered that A. A. Brooke be, and he is hereby, appointed guardian *ad litem* herein to appear and defend for said infants.

CHAS. P. JAMES, *Justice, &c.*

The above order having been improvidently passed, it is this 13th day of April, 1885, ordered that the same be, and is hereby, vacated and annulled.

CHARLES P. JAMES, *Justice.*

35 *Order Naming Com'rs to Appoint Guardians ad Litem for Certain Infants, &c. Filed Apr.* 28, '85. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOS. J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

On motion of Hillyer & Ralston, plaintiff's solicitors, it is this 28th day of April, 1885—

Ordered that a commission issue unto R. T. Barton, E. Holmes Boyd, and Holmes Conrad, of Winchester, Virginia, authorizing them or any two of them to go to Nathaniel Beverly Tucker and William Francis Peyton Tucker, infant defendants herein, and

appoint a guardian for the purpose of answering and defending the suit on their behalf, and authorizing them likewise to take the answer and return it to the court; and be it further—

Ordered that a commission issue unto A. G. Lackey, Collins Peebles, and John R. Vance, of Marshall, Missouri, authorizing them or any two of them to go to Virginia Tucker, infant defend-
36 ant herein, and appoint a guardian for the purpose of answering and defending the suit on *their* behalf, and authorizing them likewise to take the answer and return it to the court; and be it further—

Ordered that a commission issue unto L. W. D. Quinn, R. T. Christian, and C. C. Neely, of Iola, Texas, authorizing them or any two of them to go to Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, infant defendants herein, and appoint a guardian for the purpose of answering and defending the suit on their behalf, and authorizing them likewise to take the answer and return it to the court.

A. B. HAGNER,
Asso. Justice.

37 *Ans. of Infants. Filed May 14th, '85. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, the 28th Day of April, 1885.

THOMAS J. FISHER
v.
J. R. TUCKER *et al.* } In Equity. No. 9305, Docket 24.

The President of the United States to L. W. D. Quinn, R. T. Christian, and C. C. Neely, of Iola, Texas, Greeting:

Know ye that because by a special order of said court in the above-entitled case you have been assigned to appoint a guardian for the defendants Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, alleged to be under the age of twenty-one years, and by said guardian to take the answer of said infant defendants; these, therefore, are to empower you or any two of you to go to said defendants, if they cannot conveniently come to you, and appoint a guardian for said infant- and take the answer of said infant- by such guardian upon his oath or affirmation,
38 to be administered by you or any two of you; and, having so done, you are to send the same, closed up under your seals, together with your certificate of your having appointed such guardian as aforesaid, to the said court without delay.

Witness D. K. Cartter, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

We, whose names are hereunto subscribed, in pursuance of the foregoing commission to us directed, did, on the 8th day of May, 1885, cause Francis M. Tucker, Mary Thornton Tucker, and Na-

thaniel Beverly Tucker, the infants in the said commission named, to come before us at Bryan, in the county of Brazos, in the State of Texas, and we then and there assigned Victor B. Hudson to be their guardian, to answer and defend this suit on their behalf; and the answer of the said Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, the said infants, was taken, and the said Victor B. Hudson, as guardian, was duly sworn to the truth thereof at the time and place aforesaid and by virtue
39 of the said commission.

Before us—

L. W. D. QUINN, [SEAL.]
C. C. NEELEY, [SEAL.]
Commissioners.

The answer of Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, defendants, to the bill of complaint of Thomas J. Fisher, complain-t, filed against them and others in the supreme court of the District of Columbia, No. 9305, equity.

The said defendants say that they are infants, under the age of twenty-one years, and that they claim such interest in the premises as they are entitled to, and submit their said interests to the protection of this honorable court, and pray to be hence dismissed with reasonable costs.

FRANCIS M. TUCKER,
MARY THORNTON TUCKER,
NATHANIEL BEVERLY TUCKER,
By VICTOR B. HUDSON, *Guardian.*

Subscribed and sworn before us the 8th day of May, 1885.

L. W. D. QUINN, [SEAL.]
C. C. NEELEY, [SEAL.]
Commissioners.

40 *Pl'ff's Replication to Ans. of F. M. Tucker, M. T. Tucker, & N. B. Tucker, by V. B. Hudson, Their Guardian ad Litem. Filed May 14th, 1885. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Replication of plaintiff to answer of Francis M. Tucker, Mary Thornton Tucker, and Nathaniel Beverly Tucker, infant defendants, by Victor B. Hudson, their guardian *ad litem.*

The plaintiff joins issue upon the answer of said defendants by their said guardian.

HILLYER & RALSTON,
Plaintiff's Solicitors.

41 *Rescinding Part of Order of Apr. 28, '85, & Appointing S. D. Cowan et al. Com'rs to Appoint G'd'n for Virginia Tucker, &c. Filed May 25th, 1885. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia:

THOS. J. FISHER *vs.* J. R. TUCKER *et al.* } Equity. No. 9305.

It is this 25th day of May, 1885—

Ordered that the order herein passed on the 28th day of April, 1885, so far as it appointed A. G. Lackey, Collins Peebles, and John R. Vance, of Marshall, Mo., commissioners to appoint a guardian for the defendant Virginia Tucker, alleged to be under the age of twenty-one years, and by said guardian to take the answer of said infant defendant, and the commission issued under said order be, and they are hereby, set aside and rescinded; and be it further—

Ordered that Samuel D. Cowan, Fred. J. Lufler, and James W. Fowler, of St. Joseph, Missouri, be, and they are hereby, assigned to appoint a guardian for the said defendant, Virginia Tucker, who resides in St. Joseph, Mo., and by said guardian to take the
42 answer of said infant defendant.

A. B. HAGNER.

43 *Order of Publication. Filed June 15, 1885. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOS. J. FISHER *vs.* J. R. TUCKER *et al.*, Heirs of T. T. Tucker. } Equity. No. 9305. Docket 24.

Order of publication.

The object of the above-entitled bill is to quiet the title of Thomas J. Fisher to sublots 17, 18, 19, 23, 24, and 27 to 45, both inclusive, in square 151, in the city of Washington, District of Columbia, as against the defendants hereinafter named and John R. Tucker, M. C., Beverly Tucker, Laura Tucker, and Jane S. Tucker, also defendants herein (who have been served in this cause in person), said defendants being averred by the bill to be all of the heirs of Thomas Tudor Tucker and non-residents of the District of Columbia. Plaintiff herein claims title to the before-described property under color of title of tax deed made in 1840, and by virtue of quiet, peaceable, open, notorious, and continuous adverse possession in himself and his prede-
44 cessors in title for more than twenty years; and it appearing to the court that Fanny Bland Graham, J. R. Graham, Mary Tucker Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John T. Brown,

John Randolph Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, St. George T. Brooke, I. Fairfax McLaughlin, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, H. Tudor Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis
45 Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, John R. Bryan, Delia Page, John R. Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George T. C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronnean Brown, Virginia C. Braxton, and St. George T. Coalter are non-residents—

It is therefore this 15th day of June, A. D. 1885, ordered and adjudged that the complainant, by causing a copy of this order to be inserted in The Evening Star, a newspaper published at Washington, D. C., once in each of three successive weeks before the 17th day of September, A. D. 1885, give notice to the said absent defendants of the object and substance of this bill and warn them to appear in this court in person or by solicitor on or before the 17th day of September next to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed.

A. B. HAGNER.

HILLYER & RALSTON,
Plaintiff's Solicitors.

46 *Proof of Publication in Evening Star. Filed Sept.* 2, 1885. *R. J. Meigs, Clerk.*

Certificate of publication.

CITY AND COUNTY OF WASHINGTON, *District of Columbia,* } *ss:*

On this 31st day of August, A. D. one thousand eight hundred and eighty-five, personally appeared before me, a notary public in and for the city and county aforesaid, C. S. Noyes, who, being duly sworn according to law, declares that he is one of the proprietors and publishers of The Evening Star, a daily newspaper published in the city and county of Washington, District of Columbia, and that the advertisement, of which the annexed is a true copy, was published on the following dates: June 16, 23, 30, 1885.

CROSBY S. NOYES.

Sworn and subscribed to before me this 31st day of August, A. D. eighteen hundred and eighty-five.

[NOTARIAL SEAL.] JOHN T. C. CLARK,
Notary Public.

47 In the Supreme Court of the District of Columbia.

THOS. J. FISHER
vs.
J. R. TUCKER *et al.*, Heirs of T. T. Tucker. } Equity. No. 9305, Docket 24.

Order of Publication.

The object of the above-entitled bill is to quiet the title of Thomas J. Fisher to sublots 17, 18, 19, 23, 24, and 27 to 45, both inclusive, in square 151, in the city of Washington, District of Columbia, as against the defendants hereinafter named and John R. Tucker, M. C. Beverly Tucker, Laura Tucker, and Jane S. Tucker, also defendants herein (who have been served in this cause in person), said defendants being averred by the bill to be all of the heirs of Thomas Tudor Tucker and non-residents of the District of Columbia. Plaintiff herein claims title to the before-described property under color of title of tax deed made in 1840 and by virtue of quiet, peaceable, open, notorious, and continuous adverse possession in him-
48 self and his predecessors in title for more than twenty years; and, it appearing to the court that Fanny Bland Graham, J. R. Graham, Mary Tucker Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John T. Brown, John Randolph Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, St. George T. Brooke, I. Fairfax McLaughlin, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, H. Tudor Tucker, Cynthia B. T. Coleman, Chas. W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, Wm. Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, John R. Bryan, Delia Page, John R.
49 Page, Fanny Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George T. C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, and St. George T. Coalter are non-residents, it is therefore, this 15th day of June, A. D. 1885—

Ordered and adjudged that the complainant, by causing a copy of this order to be inserted in The Evening Star, a newspaper pub-

lished at Washington, D. C., once in each of three successive weeks before the 17th day of September, A. D. 1885, give notice to the said absent defendants of the object and substance of this bill and warn them to appear in this court, in person or by solicitor, on or before the 17th day of September next to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed.

A. B. HAGNER.

HILLYER & RALSTON,
Plaintiff's Solicitors.

A true copy.
Test:

R. J. MEIGS, *Clerk*,
By M. A. CLANCY,
Assistant Clerk.

50 *Entry of Appearance. Filed Sep.* 18, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOS. J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

The clerk will please enter my appearance for the defendants Fanny Bland Graham and J. R. Graham in the above-entitled cause.

H. BRADLEY DAVIDSON, *Att'y.*

51 *Proof of Publication of Substance & Object of Bill in Law Reporter. Filed Sept.* 18, 1885. *R. J. Meigs, Clerk.*

WASHINGTON, D. C., *Sept.* 18, 1885.

Messrs. Hillyer & Ralston to Washington Law Reporter, Dr., 631 F street.

To publishing notice of publication—Thos. J. Fisher *v.* J. R. Tucker *et al.* ---------- $19 45

Rec'd payment.

JOHN L. GINCK.

UNITED STATES OF AMERICA,
District of Columbia, } *ss:*

On this 18th day of September, A. D. 1885, personally appeared before me, the undersigned, a U. S. commissioner in and for the District aforesaid, John L. Ginck, being personally well known to me, and made oath in due form of law to the following statement, viz: That affiant is the publisher of the "Washington Law Reporter," a newspaper published in the city of Washington, D. C.; that the annexed notice was published in said "Washington Law Reporter" once a week for three successive weeks, as follows: June 20, June 27, July 4, 1885.

JOHN L. GINCK.

Sworn and subscribed before me the day and year above written.

LUCIAN O'BRIEN,
United States Com'r.

[SEAL]

52 In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.*, Heirs of T. T. Tucker. } Equity. No. 9305, Docket 24.

Order of Publication.

The object of the above-entitled bill is to quiet the title of Thomas J. Fisher to sublots 17, 18, 19, 23, 24, and 27 to 45, both inclusive, in square 151, in the city of Washington, District of Columbia, as against the defendants hereinafter named, and John R. Tucker, M. C. Beverly Tucker, Laura Tucker, and Jane S. Tucker, also defendants herein (who have been served in this cause in person), said defendants being averred by the bill to be all of the heirs of Thomas Tudor Tucker, and non-residents of the District of Columbia. Plaintiff herein claims title to the before-described property under color of title of tax deed made in 1840, and by virtue of quiet, peaceable, open, notorious, and continuous adverse possession in himself and his predecessors in title for more than twenty years; and *in* appearing to the court that Fanny Bland Graham, J.
53 R. Graham, Mary Tucker Magill, Evelina Powell, W. L. Powell, Virginia Edwards, John E. Edwards, Elizabeth Dallas Tucker, Virginia B. Tucker, Dallas Tucker, Hattie A. Tucker, Cassie D. Brown, John T. Brown, John Randolph Tucker, Emma B. Tucker, Evelina T. Lucas, D. B. Lucas, Nannie S. McLaughlin, St. George T. Brooke, I. Fairfax McLaughlin, Mary B. Brooke, Frank J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Henry L. Brooke, Elizabeth D. Brooke, Laura Beverly Bedinger, Everett W. Bedinger, Elizabeth Gilmer Tucker, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Eliza Taylor Tucker, Alfred B. Tucker, H. Tudor Tucker, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, John R. Bryan, Delia Page, John R. Page, Fanny
54 Carmichael, S. W. Carmichael, Georgia B. Grinnan, A. G. Grinnan, John R. Bryan, Jr., Margaret R. Bryan, St. George T. C. Bryan, Joseph Bryan, Isabel S. Bryan, C. B. Bryan, Mary S. C. Bryan, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, and St. George T. Coalter are non-residents, it is therefore, this 15th day of June, A. D. 1885—

Ordered and adjudged that the complainant, by causing a copy of this order to be inserted in The Evening Star, a newspaper published at Washington, D. C., once in each of three successive

weeks before the 17th day of September, A. D. 1885, give notice to the said absent defendants of the object and substance of this bill, and warn them to appear in this court, in person or by solicitor, on or before the 17th day of September next to answer the premises and show cause, if any they have, why a decree ought not to be passed as prayed.

A. B. HAGNER.

HILLYER & RALSTON,
Plaintiff's Solicitors.

A true copy.
Test:

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk.*

55 *Ans. of Defendants F. B. Graham & J. R. Graham. Filed Sept.* 23, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
JOHN R. TUCKER *et al.* } Equity. No. 9305.

Answer.

The answer of the defendants Fanny Bland Graham and J. R. Graham to the bill of complaint in the above-entitled cause filed.

1. They have no knowledge of the residence of the plaintiff; they therefore neither affirm nor deny paragraph (1).

2. They admit that they reside in the State of Virginia, and they admit the residences of their codefendants to be as is stated in the bill, so far as they are advised.

3. They admit that Thomas Tudor Tucker was on the 10th day of April, 1818, the owner of square 151, in the city of Washington, District of Columbia, and continued to be the owner until his death in the year 1828.

4. They have no knowledge of the sale made or deed given by the corporation of Washington for default of taxes, as is al-
56 leged in the bill, nor of the consideration paid therefore by said Abbott, but they claim that if said sale and conveyance were made and given they were wholly void and did not affect these defendants with even constructive notice thereof, by reason of various omissions and irregularities therein contained. They further deny that, to the best of their information and belief, said Abbott, the pretended purchaser and the grantee in said pretended tax deed, ever entered into the actual occupation of said square, and they deny that said Abbott and those claiming under him by conveyance from him has held the quiet, peaceable, open, notorious, and continuously adverse possession of said property since the said pretended conveyance in 1841, but they say that they are informed

and believe said property was wholly unoccupied until the year 1870, and they claim that the title thereto has been and still continues to be in these defendants and their codefendants.

57 They deny that, and they are informed and believe, the taxes assessed upon said property have been paid by said Abbott and his grantees, but aver that even had such payments been made they do not affect the rights of these defendants.

These defendants admit the references to the deeds pretending to convey the said property to be correct, but aver that no title to said property passed thereby, from the fact that said Abbott never had a valid title thereto, and they say that the title continues to be and and is in them and their codefendants, and they claim title thereto as follows:

(*a.*) James M. Lingan was the original proprietor, and on division between him and the United States square 151 was retained by him.

(*b.*) Walter Smith, trustee, to Michael Nourse; deed recorded among the land records of the District of Columbia in Liber A. Q. 41, at folio 379 *et sq.*; conveys square 151 in fee under power conferred by decree in case of Bank of Columbia *vs.* Janet Lingan, a bill for sale and settlement of the estate of James M. Lingan, deceased.

58 (*c.*) Michael Nourse to Thomas Tudor Tucker, deed in fee; recorded April, 1818, in Liber A. Q. 41, at folio 346; conveys all of square 151. This defendant, Fanny Bland Graham, says that from personal knowledge, family tradition, and statements made by her parents, which she distinctly remembers, that Thomas T. Tucker, who lived in Washington during the early part of the 19th century, was the uncle of her grandfather, H. St. G. Tucker.

(*d.*) That Thomas Tudor Tucker died intestate as to this property, and his brother St. Geo. Tucker was his only heir entitled to inherit from him this property.

(*e.*) That St. George Tucker died intestate as to this property, leaving three children entitled to inherit the same, of whom H. St. George Tucker was one; that the widow of said St. George is long since dead.

(*f.*) That H. St. G. Tucker died intestate as to this property, leaving eight children, of whom Ann E. Tucker, who intermarried with Dr. Alfred T. Magill, was one; that the widow of H. St. G. Tucker is long since dead.

59 (*g.*) That Dr. Alfred T. Magill and Ann E., his wife, died intestate as to this property, leaving four children, of whom this defendant, Fanny Bland Magill, who was intermarried with the defendant J. R. Graham, is one.

And these defendants pray that the prayers of the plaintiff in this cause be denied and the suit dismissed with costs to the defendants herein.

H. BRADLEY DAVIDSON, *Att'y.*

I, Fanny B. Graham, on oath say that I have read the foregoing answer and the facts therein stated are true so far as I am informed.

FANNY B. GRAHAM.

Signed and sworn to before me, a notary public, this 22nd day of September, 1885.

[NOTARIAL SEAL.] WM. M. ATKINSON,
Notary Public in and for the County of Frederick, State of Virginia.

60 *Replication to Ans. of Def'ts Fanny Bland & J. R. Graham. Filed Sept. 26, '85. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Plaintiff's replication to the answer of Fanny Bland Graham and J. R. Graham.

Plaintiff joins issue upon each and every paragraph of defendants' answer herein.

THOMAS J. FISHER,
By HILLYER & RALSTON,
His Solicitors.

61 *Order Vacating Pro Confesso as to Certain Def'ts. Filed Oct. 14, 1885. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
JOHN R. TUCKER *et al.* } Equity. No. 9305.

This cause coming on to be heard on motion and having been considered by the court, it is thereupon, this 14th day of October, 1885, ordered that the decree *pro confesso* heretofore taken against the defendants John R. Bryan, Delia Page, John R. Page, Francis and S. W. Carmichael, George B. and A. G. Grinnan, John R. and Margaret R. Bryan, St. George T. C. Bryan, Joseph and Isabel S. Bryan, C. B. and Mary S. C. Bryan be, and the same is hereby, vacated and set aside and said defendants allowed to file their answer.

A. B. HAGNER.

62 *Joint & Several Ans. of J. R. Bryan, Delia Page, et als. Filed Oct. 14th, '85. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

THOMAS J. FISHER
vs.
JOHN R. TUCKER *et al.*, Heirs of Thomas T. Tucker. } No. 9305.

The joint and several answer of the defendants John R. Bryan; Delia Page and John R. Page, her husband; Francis Carmichael and S. W. Carmichael, her husband; Georgia B. Grinnan and A. G. Grinnan, her husband; John R. Bryan, Junior, and Margaret R. Bryan, his wife; St. George Tucker C. Bryan; Joseph Bryan and Isabel S. Bryan, his wife; C. B. Bryan and Mary S. C. Bryan to the bill of complaint against them in this cause filed.

These defendants, answering, say—

They admit the allegations contained in the first paragraph of the bill.

They admit the allegation contained in the second paragraph of the bill that they are all heirs of Thomas Tudor
63 Tucker, deceased, and that the persons named as defendants embrace all of the heirs of Thomas Tudor Tucker, deceased.

They admit the allegations contained in the third paragraph of the bill.

In answer to the allegations contained in the fourth paragraph of the bill they say that they have no knowledge of the truth or falsehood of the allegations concerning the alleged sale of the said square one hundred and fifty-one by the corporation of the city of Washington for taxes and they call for strict proof of the same, and they allege on information and belief that if such a sale was made in the year eighteen hundred and thirty-seven the same was not made in accordance with law and was null and void and no proper deed could be executed thereon, and if one was so executed it was of no effect and conveyed nothing, and these de-
fendants, on information and belief, deny that said Joseph
64 Abbott ever entered into actual possession of the said real estate, and they deny that he or his grantees have since the year eighteen hundred and forty-one remained in quiet, peaceable, open, notorious, and adverse possession of said real estate, claiming during all said period the complete, legal, and beneficial ownership thereof as against all persons; that these defendants have no knowledge of the truth of the allegations concerning the payment of taxes, and if the same are considered material they call for strict proof of the same, and these defendants aver, on information and belief, that the said square one hundred and fifty-one was up to and since the year of our Lord one thousand — and seventy-two of little value and in an unimproved and unoccupied portion of the city of Washington, and the same was, with much other real estate contiguous

thereto, open commons, unenclosed, and unimproved in any way, and there was no adverse or open possession thereof of any kind whatever as against these defendants and the other heirs of the
65 said Thomas T. Tucker, and those defendants are advised by counsel and aver that the mere payment of taxes assessed against said real estate, the same being so unimproved and unenclosed, if such payments were made as alleged, gave the payers thereof no right in said real estate against these defendants and the other heirs of the said Thomas Tudor Tucker, and these defendants ask that they may have the same benefit as if they had demurred to this and similar portions of the bill. These defendants have no knowledge of the truth or falsehood of the other allegations contained in this paragraph or the claim of title therein set out, but if the same are considered material ask for strict proof thereof; but these defendants deny that said conveyances could or did pass any legal or equitable title to any portion of said square one hundred and fifty-one, and on information and belief these defendants deny that any of the grantees in any of the alleged conveyances entered upon or ever was in actual possession of any part of square one hundred and fifty-one, and they further, on information
66 and belief, deny that the complainant is the exclusive owner or possessor of any part of square one hundred and fifty-one.

These defendants admit the truth of the allegations that the tax sale on which it is alleged the deed from the corporation of the city of Washington was issued to Joseph Abbott, in the year eighteen hundred and forty, was irregular and defective, and that nothing passed by said deed, and the title to said real estate remains in the heirs of the said Thomas Tudor Tucker. These defendants deny that there is or ever has been any adverse possession of the real estate named in the bill as against the heirs of the said Thomas Tudor Tucker, but had there been such an adverse possession these defendants submit that an appeal to a court of equity by a person claiming merely a title by adverse possession as against the legal and equitable owners of real estate is a proceeding which will not be entertained by a court of chancery, and these defendants
67 ask that they may have the same benefit as if they had demurred to this portion of the bill.

And these defendants allege that the legal and equitable title to said real estate is now outstanding in the heirs of Thomas Tudor Tucker.

These defendants again admit that all the heirs of the said Thomas Tudor Tucker are named as defendants to this bill.

These defendants have no knowledge of the truth of the allegations concerning the will of the said Thomas Tudor Tucker and the proceedings taken thereon.

And these defendants, having fully answered, pray that they may have the same benefit as if they had demurred, and that they may be hence dismissed with their costs in this cause incurred.

HENRY WISE GARNETT,
Sol'r for Def'ts.

68 *Answer of J. R. Tucker & Others. Filed Oct.* 15, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia, this — Day of ——, 1885.

THOMAS J. FISHER
vs.
JOHN RANDOLPH TUCKER and Others, Heirs of Thos. Tudor Tucker, Dec'd. } No. 9305, Equity Docket 24.

The joint and seperate answer of J. Randolph Tucker, N. Beverly Tucker, Henry Tudor Tucker, Eliza Taylor Tucker, widow and devisee of Dr. Alfred B. Tucker, and his son Alfred B. Tucker, Elizabeth G. Tucker, widow and devisee of St. George Tucker; Elizabeth D. Tucker, widow and doweress of Dr. David H. Tucker; Dallas Tucker, John R. Tucker, Jr., Virginia B. Tucker, John Thompson Brown and Cassie D., his wife; Emma B. Brown, formally Tucker, wife of Forrest Brown; St. George T. Brooke, Henry L. Brooke, Daniel B. Lucas and Evelina T., his wife; I. Fairfax McLaughlin and Nannie S., his wife; Everett Bedinger and Laura, his wife, and Elizabeth D. Brooke to the bill of the above-
69 named complainant.

In answer to said bill of complaint the above defendants say:

1st. They are not advised and therefore neither admit nor deny that the said plaintiff is a citizen and resident of the District of Columbia.

2nd. They cannot say that the parties named in the second paragraph of the bill are all the heirs of Thos. Tudor Tucker or not. They aver that they are his heirs.

3rd. They admit as true, as alleged in the third paragraph, that Thomas Tudor Tucker was the legal owner of square 151, as platted in the original division of the city of Washington, and continued to be the owner and possessor of said square till his death, which they are informed and believe occurred in the year 1828.

4th. They know nothing of the matters and things alleged in the fourth paragraph so far as the same relate to the arrearage of taxes due on said lot and the sale of the same to Joseph Abbott and the deed for said lot to Joseph Abbott by the mayor, board of alder-
70 men, and board of common council for the city of Washington, and call for strict proof of the same.

They aver, if any such sale and deed were made, they are and were absolutely void and of no effect.

They deny that Joseph Abbott, within one year after execution of said deed in 1840 (if any such was made) or at any other time, entered into the actual possession of the said square. They further deny that the said Joseph Abbott and his grantees have remained and been in the quiet, peaceable, open, notorious, and continued possession of this square ever since the said deed was executed, and

that they, the said Abbott and his grantees, claimed during all that time complete, legal, and beneficial ownership thereof.

These respondents, on the contrary, aver that the deed to Joseph Abbott was entirely void and passed no right whatever; that the said property specified in said pretended deed has not been since its date under the control or in the occupation of Joseph Abbott or any of his grantees.

71 These respondents aver that the heirs of Thomas Tudor Tucker being all this time the holders of the legal title to said square, they have been in the legal possession thereof. They know nothing of the value of said property or the attempted conveyance thereof to the persons enumerated in said paragraph, and call for strict proof of the same.

They deny again that any of the pretended grantees of said property ever held possession of it, as averred in the bill; that said property has been uninclosed since 1841 down to nearly the present time, and no one of the said pretended grantees ever held possession of the same or exercised a single act of ownership over it, as claimed. They do not know whether the said Joseph Abbott and his said pretended grantees have payed the city taxes on said property since 1841, and call for strict proof of the same.

But if these taxes were thus paid they maintained that such payment does not give title to the holder of a void tax deed or

72 deprive these respondents and the other heirs of Thomas Tudor Tucker of this property or of their right to hold it.

They admit, as stated in said fourth paragraph, that the tax deed to Joseph Abbott conveyed no legal title and that the same remains in the heirs of Thomas Tudor Tucker.

They deny the adverse possession and deny that the plaintiff has any title to any part of the square aforesaid, but that the title and beneficial ownership of the same are now and have been since the death of Thomas Tudor Tucker in his heirs.

They know nothing of the failure of the executors of Thomas Tudor Tucker to act upon his will, and call for strict proof of the same.

These defendants maintain that they and the other heirs of Thomas Tudor Tucker hold the legal title to said property; have been in the legal possession of the same and are its true and beneficial owners, and that the bill of complaint should be dismissed and their title to and right to possess the said square declared to be perfect.

HUNTON & CHANDLER,
Solicitors for Above-Named Defendants.

73. I do solemnly swear that I have read the above answer and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated — information and belief I believe to be true.

N. BEVERLY TUCKER.

Sworn to before me, a notary public of the county of Morgan, in the State of W. Va., 12th day of Oct., 1885.

Given under my hand and notarial seal this 12th day of October, 1885.

[NOTARIAL SEAL.] T. H. B. DAWSON,
Notary Public.

74 *Replication to Ans. of J. R. Tucker et al., Def'ts Herein. Filed Oct* 19, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOS. J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Plaintiff's replication to the joint and seperate answer of J. Randolph Tucker, N. Beverly Tucker, Henry Tudor Tucker, Eliza Taylor Tucker, Alfred B. Tucker, Elizabeth G. Tucker, Elizabeth D. Tucker, Dallas Tucker, Jno. R. Tucker, Jr., Virginia B. Tucker, Jno. Thompson Brown and Cassie D. Brown, Emma B. Brown, St. George T. Brooke, Henry L. Brooke, Daniel B. Lucas and Evalina T. Lucas, I. Fairfax McLaughlin and Nannie S. McLaughlin, Everett Bedinger and Laura Bedinger, and Elizabeth D. Brooke.

Plaintiff joint issue upon each and every paragraph of the answer of the above-named defendants herein.

HILLYER & RALSTON,
Pl'ff's Solicitors.

75 *Replication to Answers of Jno. R. Page et al. by H. W. Garnett, Their Solicitor. Filed Oct.* 19, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOS. J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Plaintiff's replication to the joint and several answers of John R. Page, Delia Page, John R. Page, Francis Carmichael and S. W. Carmichael, Georgia B. Grinnan and A. G. Grinnan, John R. Bryan, Jr., and Margaret R. Bryan, St. George Tucker C. Bryan, Joseph Bryan and Isabel S. Bryan, C. B. Bryan, and Mary S. C. Bryan.

Plaintiff hereby joins issue upon each and every paragraph of above-named defendants' answers herein.

HILLYER & RALSTON,
Pl'ff's Sol's.

76 *Pro Confesso Against Certain Def'ts & Reference to L. Cabell Williamson, Ex'm'r, to Take Testimony. Filed Nov.* 4, 1885. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Summons having been issued against the hereinafter-named defendants and duly returned "not to be found," and publication having been duly ordered against the said defendants as absent defendants the 27th day of January, A. D. 1885, and additional publication against the said defendants, setting forth the objects and substance of the bill in the above-entitled cause, having been ordered on the 15th day of June, A. D. 1885, and proof of both of said publications having been duly made, and the said defendants not having entered their appearance herein, it is this 4th day of November, A. D. 1885—

Ordered, adjudged, and decreed that the bill of complaint herein be taken as confessed by the following-named defendants, to wit: Mary Tucker Magill, Evelina Powell, W. L. Powell,
77 Virginia Edwards, John E. Edwards, Hattie A. Tucker, Mary B. Brooke, Fannie J. Brooke, Gay Bentley Brooke, D. Tucker Brooke, Lucy Higgins Brooke, Walker Gilmer Tucker, Lizzie Edwards Tucker, Evelina Tucker, Lucy Richardson, Robert B. Richardson, Annie Tyler, Lyon G. Tyler, Cynthia B. T. Coleman, Charles W. Coleman, B. St. George Tucker, Eliza C. Tucker, Fanny B. B. T. Taliaferro, Julia Clark Tucker, Nathaniel Beverly Tucker, William Francis Peyton Tucker, Ada B. Lewis Tucker, Virginia Tucker, Virginia Lewis Tucker, Francis M. Tucker, Mary Thornton Tucker, Nathaniel Beverly Tucker, Fanny Bland Brown, H. Peronneau Brown, Virginia C. Braxton, and St. George T. Coalter; and be it further—

Ordered that L. Cabell Williamson, an examiner of this court, be, and he is hereby, appointed and directed to take testimony to support the allegations of the bill of complaint herein.

A. B. HAGNER.

78 *Order Appointing R. Townsend Ex'm'r to Take Testimony of A. J. Perry. Filed Jan.* 27, 1886. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

On motion of Messrs. Hillyer and Ralston, plaintiff's solicitors, it is this 27th day of January, A. D. 1886—

Ordered that Robert Townsend, attorney-at-law, 64 Wall street, New York, N. Y., be, and he is hereby, appointed examiner to take the testimony of Alexander J. Perry, a witness to be produced on behalf of the plaintiffs in the above-entitled cause.

CHARLES P. JAMES,
Justice, &c.

We consent to the passing of above order.

HUNTON & CHANDLER.
H. BRADLEY DAVIDSON.
HENRY WISE GARNETT.

79 *Interrogatories to be Propounded to A. J. Perry. Filed Jan. 27th, 1886. R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Interrogatories to be propounded to Alexander J. Perry, U. S. A., Governor's island, New York, a witness to be produced for the complainants in the above-entitled cause.

1. What is your age, present place of residence, and occupation?

2. Did you ever reside in the city of Washington, D. C.; and, if so, during what period?

3. Are you acquainted with a square of ground in Washington numbered 151 and lying between 17th and 18th and T and U Sts. northwest?

4. Did you ever own this square? If so, when and from
80 whom did you purchase it, what consideration did you pay, how long did you own it, and to whom and for what consideration did you sell it?

5. If you state that you purchased this square from Mrs. Abbott, the widow of Joseph Abbott, state whether, at the time you received your deed, the possession of the premises was transferred by her to you and whether you retained the possession until you sold to H. A. Willard.

6. What acts did you perform during the period of your ownership relating to the actual possession of the property or to its use or occupation, and particularly whether you paid the taxes upon the same, whether there was any enclosure around or any structure upon the premises, and whether you or any one for you occupied the whole or any part of the premises?

7. What personal knowledge had you of the condition, possession, and ownership of this square at any time prior to your purchase? State fully.

81 8. What did you learn as to the title of this property at the time of your purchase, and in what way did you acquire your information on this point?

9. Did you personally know Joseph Abbott; and, if so, during what period?

10. Between the time of your purchase and the sale to Willard was there any interference by any one with your possession of this square?

11. During that period did you know of any one beside yourself claiming to be the owner of the square or claiming any interest therein adversely to you?

12. For what use was this square principally valuable at the time of your purchase and during your ownership?

13. If you state that its principal value was for sites for residence buildings, state whether you took any steps toward building upon the same or toward subdividing the same for building purposes.

82 *Com'r to Get Testimony of Alex. J. Perry. Issued Jan'y* 27, '86.

In the Supreme Court of the District of Columbia, the 27th Day of January, 1886.

THOMAS J. FISHER
v.
J. R. TUCKER *et al.* } No. 9305, Equity Docket 24.

The President of the United States to Robert Townsend, attorney-at-law, 64 Wall street, New York, N. Y., Greeting:

Know you that, in confidence of your prudence and fidelity, you have been appointed and by these presents you are invested with power and authority to examine Alexander J. Perry as a witness for the complainants in the above-entitled cause upon the interrogatories annexed to this commission; and therefore you are hereby commanded, at a certain day and place or certain days and places to be appointed by you, to cause said witness to come before you and then and there examine him on oath or affirmation upon the said interrogatories and reduce his testimony into writing, to be
83 signed by said witness, and, having so done, annex the same to this writ, closed up under your seal, and make return thereof into said court with all convenient speed.

Witness D. K. Cartter, chief justice.

[Seal U. S. S. C., D. C.]

R. J. MEIGS, *Clerk*,
By M. A. CLANCY, *Ass't Clerk*.

84 *Deposition of A. J. Perry. Filed Feb'y* 10, '86.

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } No. 9305.

On this 9th day of February, A. D. 1886, personally appeared before me, Robert Townsend, an examiner duly appointed and acting

under and by virtue of the commission hereto attached, Alexander J. Perry, U. S. A., a witness produced on behalf of the plaintiff in the above-entitled cause, and the said ALEXANDER J. PERRY, being first duly sworn by me, at my office, No. 64 Wall street, New York, N. Y., made answer to the attached interrogatories as follows:

In answer to the first interrogatory he says: I am of full age. I reside at New York city. I am an officer in the United States Army.

In answer to the second interrogatory he says: I resided in
85 Washington, D. C., in the years 1862, 1863, 1864, 1865, 1866, 1867, and 1868, except when absent on duty.

In answer to the third interrogatory he says: Yes; I am.

In answer to the fourth interrogatory he says: I owned the property and purchased it from Mrs. Elizabeth E. Abbott for the consideration in the deed from her to me. I purchased it in August, 1863, and sold it to Mr. Henry A. Willard in the spring of 1868 for the consideration named in the deed to Mr. Willard from me.

In answer to the fifth interrogatory he says: I took possession at the time of the transfer to me and surrendered possession to Mr. Willard at the time of the transfer to him.

In answer to the sixth interrogatory he says: I paid all taxes upon said property while I owned it. There was a small house upon the premises at the time of my purchase, occupied by
86 a colored man, who I understood had charge of the premises for Mrs. Abbott, who, to the best of my recollection, I continued in charge of the premises for me, until the sale to Mr. Willard. The square was partially fenced, and, as I remember, partially cultivated by the colored man above referred to during my ownership.

In answer to the seventh interrogatory he says: I suppose my personal knowledge of the square may have continued from one to two months before my purchase, and during that time the square and house upon it were in substantially the same condition as when I bought it.

In answer to the eighth interrogatory he says: I purchased it upon the opinion of Richard Cox, an eminent lawyer of Washington, D. C., who said the title was satisfactory, and I believed it to be a perfect title.

87 In answer to the ninth interrogatory he says: I did not know Joseph Abbott at all.

In answer to the tenth interrogatory he says: There was no interference with my possession whatever.

In answer to the eleventh interrogatory he says: I did not.

In answer to the twelfth interrogatory he says: It was valuable principally for residence buildings on city lots.

In answer to the thirteenth interrogatory he says: About six months after my purchase, as near as I can remember, I made a subdivision of the square into building lots, with the intention of having it recorded in the surveyor's office of the District of Columbia. At the time of the transfer to Mr. Willard, not having re-

corded this plot as intended, I gave it to Mr. Willard, who, as I understand, subsequently had it recorded.

ALEX. J. PERRY.

88 Subscribed and sworn to before me by the said Alexander J. Perry this 9th day of February, A. D. 1886.

ROBERT TOWNSEND,
Special Examiner.

89 *Complainant's Testimony. Filed Mar.* 24, '86. *R. J. Meigs, Clerk.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Be it remembered that at an examination of witnesses before me on the part of the complainant, begun on the 12th day of November, A. D. 1885, and continued from time to time until the 20th day of January, A. D. 1886, the within testimony was taken down in my presence and in the presence of counsel for respective parties to this suit, in short-hand, by a competent stenographer, from the oral statements of the witnesses, and was afterward written or printed with typewriter and was by me thereafter carefully read over to said witnesses, who subscribed the same.

I further certify that each and every witness before making any statement was duly sworn and warned to tell the truth, the
90 whole truth, and nothing but the truth touching the matters at issue or about which questioned, and that said testimony was given in the city of Washington, District of Columbia. The name of said witnesses are as follows: Joseph H. Bradley, William S. Graham, Francis Linkins, Catherine M. Wagler, Aaron Talbot, Samuel R. Tinkler, Joseph R. Quinter, George S. Fairfax, Albert Dodson, Nicholas Callan, Charles A. Arundell, George Fastnaught, Ephraim Barnes, John Proctor, Charles H. Mullin, Frank Wilson, Clement Beckett, Henry A. Willard, and Joseph Williams.

And I further certify that the counsel for respective parties consented to the taking of the testimony in short-hand, and that I am not of counsel for either of the parties to this suit.

L. CABELL WILLIAMSON,
Examiner in Chancery.

March 23rd, 1886.

91 *Testimony of Jos. H. Bradley.*

In the Supreme Court of the District of Columbia.

THOMAS J. FISHER
vs.
J. R. TUCKER *et al.* } Equity. No. 9305.

Met pursuant to notice at the office of Joseph H. Bradley, cor-

ner of "D" and 4½ streets, Washington, D. C., on Nov. 12th, 1885, at 11 a. m.

Present: Messrs. Hillyer and Ralston, for plaintiff; Eppa Hunton, Esq., for J. R. Tucker *et al.*; H. B. Davidson, Esq., for Fannie B. Graham *et al.*

Examination of Mr. JOSEPH H. BRADLEY by Mr. HILLYER.

Mr. JOSEPH H. BRADLEY, being duly sworn, testified as follows:

Question. Mr. Bradley, will you answer the formal questions in regard to your age, residence, and occupation?

Answer. My age is nearly 83; I have an office in this place,
92 and I reside in Montgomery Co., Md.; my occupation is a lawyer.

Q. Have you some acquaintance with a tract of ground, square No. 151, between "T" and "U" and 17th and 18th streets?

A. I have known the square described as long as I can recollect anything.

Q. What is your earliest recollection in regard to the occupation of that square?

A. I cannot positively fix the time of my recollection of it, but I knew it was occupied antecedent to 1844 by Joseph Abbott, a citizen of Washington, who was an Englishman and a very good farmer. I spoke to him about buying such a piece of ground and coming to such an expense of improving and fencing it in. He said, "Well, it cost me very little, and I can make enough off of it every year to pay the taxes and have something to leave those that come after me." He claimed to be the owner of the place.

Q. What was the business of Mr. Abbott?

A. I think he was in the livery-stable business, and my recollection is that he had been a coachman for the British minister.

93 Q. What was the character of the occupation of these premises?

A. They were enclosed by a hedge and ditch on 17th and U Sts., of that my recollection is very distinct, and they were also enclosed on T and 18th Sts., but I cannot speak of the character of that enclosure. I remember in 1844 I began experimenting with different kinds of manures on my farm. Passing with a small load by Mr. Abbott's farm, I stopped to talk with Mr. Abbott near the corner of U and 17th. I knew Mr. Abbott cultivated the place.

Q. Were you accustomed to seeing the premises?

A. I occasionally saw them up to 1864, when they were taken possession of by the soldiers.

Q. What do you say as to the substantiality of the enclosures in 1844?

A. There was a clear, well-defined ditch on 17th St. and on U St. with a hedge growing on it which, from my experience of hedges, I think could not have been less than 2 or 3 years old.

94 Q. Was it so enclosed as to turn stock and keep them away?

A. O, yes; you could keep them away; and it once had the

finest lot of timothy growing on it I think I ever saw. It had all the appearance of a permanent and fixed enclosure.

Q. What do you say as to the notoriety of the possession during that period?

A. It was obvious to every one who passed the premises.

Q. Do you know how it was spoken of?

A. I don't know. I don't recollect that I ever heard it spoken of.

Q. Did you have your attention called to this square in 1868 in a professional way?

A. Yes, sir; Mr. Carlisle was consulted and wrote an opinion, and this paper was my opinion at the same time.

Q. Will you look at this paper (Judge Hillyer hands Mr. Bradley paper) and see if it is in your handwriting?

A. No, sir; it is Mr. Duvall's.

Q. Can you fix the time of its making?

A. I don't remember.

(The paper is here offered in evidence by Judge Hillyer and marked Complainant's Exhibit "A.")

95 COMPL'T'S EX. A, JOS. A. BRADLEY'S OPINION.

"COMPLAINANT'S EXHIBIT A."

Mr. Geo. H. French.

SIR: I have, at your request, considered the case, as stated by Mr. Coxe, of the title to square No. 151. in this city.

Assuming from that statement that two years' taxes were due on the square; that it stood on the books of the corporation assessed to the heirs of Thomas Tudor Tucker; that said Tucker was then dead; that it was advertised for sale for the two or more years' taxes then past due; that the advertisement was in the same names as the assessment; that it was published once a week for twelve successive weeks prior to and up to the day of sale; that it was sold to Joseph Abbott, and he was the highest bidder therefor; that he paid the purchase-money—so much as was payable at the sale—and the residue within two years and ten days after the sale, and received a deed for it in 1840.

I concur with Mr. Carlisle in the opinion that an assessment in the name of the heirs of a deceased person is a good assessment, and if the lot is advertised and sold in the same name and all the
96 other requirements of the statute are fulfilled the sale will be a good sale; and I think the reason is obvious. The supreme court had settled that under the charter of 1820 the sale must be advertised in the name of the true owner. This was in 1823.

In 1824 Congress removed this restriction and relieved the corporation from the obligation to find out the true owner. It followed that every owner was obliged to look after his own lot to see to whom it was assessed, and that the taxes were paid under the penalty of having it sold in the name of some one else.

It made the land subject to the tax, no matter to whom it was

assessed, and shifted the burden from the corporation to the owner to see that the tax was paid.

Indeed, as I understand Mr. Cox, that was his opinion also. The assessment was good; the advertisement was good; the sale was good, and the deed passed the title; but I think this title, if there be any defect in the mere paper title, which I do not think there is—this title is beyond doubt protected in Abbott, his devisee, and her assigns under the facts stated.

97 My own clear recollection and knowledge of the facts corroborates the proof of an adversary possession of the strictest kind for more than twenty years, begun and continued under a claim of title.

Prior to 3d March, 1865, such adversary possession and claim of title could not have prevailed against the title of a person who had all the time resided out of and never been within this District. But the act of Congress of that date removed this saving, unless suit was brought within three years after its passage. No suit has been brought. On both grounds I think the title not only "marketable," but "good."

JOS. H. BRADLEY.

98 General Eppa Hunton excepts to the filing of the paper because it has no bearing on this case and, further, because it is a mere opinion of the witness and not testimony as to facts.

Cross-examination by Mr. HUNTON:

Q. You have mentioned and designated the year 1844 as the time you remember definitely of having observed this square within enclosures. State whether the appearance of the enclosure at that time indicated if it had been enclosed for some years or had been recently enclosed.

A. In seeing the hedge on 17th and U streets I should say it had been enclosed for at least 2 or 3 years before.

Q. Was there anything in the enclosure which indicated or showed that they had been recently put up?

A. My recollection is imperfect. I cannot say whether there was or not. I might add that — that time it was all in cultivation, and the whole square had been cleared off.

99 Q. Do I understand you to say, Mr. Bradley, that you have personal knowledge of the fact that it had been cultivated at this time?

A. O, yes; apparent to the eye.

Q. How do you know in 1844 that the lot which you have spoken of was in square 151, city of Washington?

A. I think I have said that I did not know the number of the square, but the ground described I do know was between T and U streets. I think I said that.

Q. Was all the square between 17th and 18th and T and U streets enclosed in 1844?

A. I think it was, to the best of my recollection.

Q. Was the whole of the square, to the best of your recollection, enclosed?

A. Yes, sir; it is my clear recollection that it was.

Q. You first noticed this square in 1844?

A. I first noticed the enclosure in 1844. I suppose at that time I knew every square in Washington. I was born here and was a notary public for the largest bank in the city, and became
100 familiar with all the inhabitants.

Q. At that period, Mr. Bradley, in 1844, what was the condition of that part of the city as to improvements?

A. According to my recollection, there was one square cleared up and occupied between "Holmead burying-ground" and 15th St. north of P St., in what was called in those days "the slashes."

Q. Well, were there any streets laid out from P St.?

A. There were no streets or roads, but the 4 corners of all the squares were planted and marked with boundary stones, and the paths usually ran along the streets.

Q. What portion of the squares in that part of the city we are talking about were enclosed in 1844?

101 A. I really cannot recall any square west of 15th St. and north of P St. except "Holmead's burying-ground" and the triangular square near the entrance to Col. Bumford's place called "Kalerama." It may be and perhaps is a fact that old Mr. John Douglass had a florist garden on the triangular square.

Q. What square?

A. Between, I think, Conn. Ave. and Boundary St. and 18th and 19th St. I cannot recall which it was. It may be that Douglass had his residence west of "Holmead's burying-ground."

Q. If no streets in that part of the city were laid out and used as streets, what enabled you to designate 17th or 18th St. from any other?

A. At that time I could have found every square west of the Capitol; I was so familiar with the plans of the city.

Q. What enabled you to fix upon these as 17th or 18th streets?

A. I don't know as anything did, except that it was never taken away.

Q. Please answer my question. What enabled you to fix upon these as being 17th or 18th Sts.?

A. I say I cannot tell, but I know this is the property from the subsequent knowledge I have had of it.

Q. Mr. Abbott, you say, cultivated this lot in 1844. When
102 was the next cultivation of this lot, and by whom?

A. I knew it to be cultivated from that time until during the war, and I have very rarely seen it since.

Q. Do you mean to say that this lot was in cultivation every year from 1844 to the war?

A. I mean to say that this lot was in grass or cultivated down to some time during the war, when it was taken possession of by the soldiers, but by whom it was cultivated I do not know.

Q. After the soldiers took possession of this lot, during the war, what became of it?

A. I never was by there when the soldiers were in possession but once that I can recollect, and know not its condition after that time.

Q. Then you know nothing of the occupation or claim of ownership to this lot since some period during the war?

A. That is true.

JOS. H. BRADLEY.

103 Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

Adjourned until Tuesday next, Nov. 17, 1885, at 2 p. m., at the office of Hillyer and Ralston, 1326 "F" St.

L. CABELL WILLIAMSON,
Examiner in Chancery.

104 *Testimony of W. S. Graham.*

In the Supreme Court of the District of Columbia.

WASHINGTON, D. C.,
TUESDAY, *Nov. 17th*, 1885—2 o'clock p. m.

Met pursuant to adjournment.

Present: Curtis J. Hillyer, Esq., and Jackson H. Ralston, Esq., counsel on behalf of plaintiff, and H. B. Davidson, Esq., counsel on behalf of the defendants.

WILLIAM S. GRAHAM, a witness on the part of the plaintiff, being duly sworn, testified as follows:

By Mr. HILLYER: Please state your name, age, residence, and occupation.

A. William S. Graham. I reside at 1524 20th street. I am 66 years of age, and am a gardener by occupation.

Q. Where did you reside during the years 1839, 1840, and 1841?

A. On square 92, bet. Conn. Ave. and 21st St.

Q. In this city?

A. Yes, sir.

Q. What was your occupation during the years 1839, 1840,
105 and 1841?

A. Gardening, sir.

Q. Were you gardening on square 92?

A. Yes, sir.

Q. Did you know during the years referred to the piece of ground between 17th and 18th and T and U streets?

A. Yes, sir.

Q. How far is that ground from your square, No. 92?

A. Two squares and a half.

Q. Do you know who was in occupation of that square in 1839, 1840, and 1841—or, say, 1840–1841?

A. Mr. Abbott.

Q. What was the character of his occupation—that is, what was he doing with the ground?

A. He had a kind of garden; he cultivated it and grew cabbage and turnips and raised some hay on it down in the orchard part.

Q. Did he have the ground enclosed at the time referred to?

A. Yes, sir.

Q. State just what the character of the enclosure was.

106 A. At that time I think it was a hedge. There was a hawthorne hedge on three sides—east, north, and west—with probably a fence of a rail or two of boards six inches wide running through; I mean intergrowing, laced with the hedges. On the south side, I think, there was a three or four rail board fence.

Q. Was the ground substantially enclosed so as to protect it from stock?

A. Undoubtedly; it had to be. Everything was out on the common there then, and if a person was growing anything they had to protect it.

Q. Did you know Mr. Joseph Abbott at that time?

A. I knew him well.

Q. What was his occupation at that time?

A. He kept a livery stable.

Q. Where was his stable, if you know?

A. I think on G St. bet. 13th and 14th, on the north side.

Q. Do you know whether he used that ground in any way in connection with his livery stable?

A. I cannot say, only that I know he hauled manure out there.

Q. Did you see him haul manure out there to his place?

107 A. Yes, sir.

Q. Do you know whether at the time we are speaking of Mr. Abbott claimed to be the owner of the property referred to?

A. I presume he did.

Q. Did you ever talk with him?

A. I often talked with him, but not as to whether he owned the property or not. I always looked upon him as the owner of that property, and for years he was there continually every day. I was around there pretty much myself, and I saw him around there nearly every day attending to different things about the place. He did not work the place regularly, as a gardener came out there and would do little things around there.

Q. From the conversations you had with Mr. Abbott, whether they were directly upon the point or not, can you state whether or not he claimed to be the owner of that ground?

A. Yes, sir; I presume he did. He certainly claimed the ground. I never asked the question, "Whether you do or do not own

108 the ground," but, from common conversation and he doing different things about the place, I always looked upon him as the owner.

Q. Did your conversations proceed upon the hypothesis that he was the owner of the ground?

A. Undoubtedly.

Q. Was there anything in his conversations which indicated that he did not own the property?

A. I should think from all the conversations I had with him that he owned the ground and claimed it.

Q. How old were you, Mr. Graham, say, in the year of 1839?

A. I presume about twenty years of age.

Q. Can you fix that date by any circumstance?

A. I was married in 1843—I think in April or May—but cannot say which month it was. I know that he owned that place previous to that.

Q. How long previous?

A. As many as three years before I was married. When we used to go to prayer-meeting we passed there often, and I recollect
109 that Mr. Abbott owned the place, and I know he owned it a long time after I was married.

Q. What was the ground called at that time? Had it any name by which it was spoken of?

A. Nothing but Abbott's garden. It didn't go by any other name, and I didn't know it had any other name.

Q. For how long did you know of this occupation by Abbott continuing in this way that you have spoken of?

A. To the best of my knowledge he owned it up to 1861, probably 1862.

Q. State your means of knowledge about his occupation of that ground. I mean the use and occupation and claim of it.

A. In 1861 or the first part of 1862 a colored man by the name of Becket had it for a garden, and there was a regiment of soldiers right north of it on the boundary, on the hill there, where Mr. Lincoln's brother owns the place. The soldiers came down there and dug his potatoes, pulled his cabbage, and took away everything. He then rented the place from Mr. Abbott and had to give it up on account of the soldiers.

Q. Do you say that Mr. Becket rented from Mr. Abbott?

110 A. Yes, sir.

Q. Was he generally considered to be the tenant of Mr. Abbott?

A. Yes, sir.

Q. What were your means of knowing, say, from 1840, 1841 up to 1861 or 1862 of the continuance of Mr. Abbott's possession of the ground we are speaking of?

A. Well, there was hardly a winter but what I was hunting around there with Elick Ricard and Adolph Ricard, and we always went through Mr. Abbott's place by the orchard there after the birds.

Q. Was that before or after your marriage?

A. After I was married. When we went hunting we always passed through there in going and coming. There was a little opening in the northeast corner of the square, and we passed through there and passed a little house about where a colored man by the name of Rounds used to live, and then we would come out
111 on the bridge on the south side of Ricard's place. There was a lane from the grave-yard on Boundary street running down to Mr. Abbott's place. There was no objection to neighbors

around there passing over the bridge, because it was a short cut going that way.

Q. What did you say as to whether the ground during this period that you are speaking of was enclosed or not?

A. It was enclosed from the time I first knew it until, I think, 1861, or after that.

Q. How often during these years were you accustomed to see this ground?

A. I can say once a month at least to keep within bounds, and it might have been twenty times. I wouldn't be positive.

Q. And you are able to say positively that during all that period the ground was enclosed and under cultivation?

A. Of my knowledge it was enclosed sufficient to protect it from stock. In those days everybody had a horse or a cow turned out to pasture on the open field, and, cattle being driven in there
112 and around him, he had to keep a fence up to protect himself.

Q. During these years you speak of was his place kept under cultivation continuously and used regularly by him?

A. I could not say that he cultivated it regularly every year from 1840 to 1861.

Q. Do you know of any year when he did not cultivate it?

A. I don't recollect a year when there was not something laid in, either by him or some one else.

Q. Did you know of anybody else during the time from 1840 to 1861 claiming the property as against Mr. Abbott?

A. Never in my life.

Q. Did you during this period ever hear of any one dispute Mr. Abbott's ownership of this property?

A. I never knew before or after he was on that property who it belonged to. I never knew who bought it from him or who had it before he got it.

Q. Did you continue to live in that immediate neighborhood up to 1861 or 1862?

A. I have been living there in that neighborhood 65 years.

113 Q. How long did you occupy this square 92 that you spoke of?

A. Really I couldn't say; from 8 to 10 years, I think. I couldn't say when it was sold to Mr. Latta.

Q. When you left that square where did you go?

A. Right where I am now.

Q. What is your present place of residence?

A. Square 94.

Q. Where is that square?

A. Right over on the northeast corner.

Q. Do you own a house at the northeast corner?

A. Yes, sir.

Q. That is the corner of 20th and Q streets n'west, is it not?

A. Yes, sir.

Q. Can you state about how many years you owned and occupied that house there?

A. I think about between 10 and 11 years. I owned it a long time before that, but I have only been living there about that time.

Q. Now, what do you know about the value of property in
114 that section of the city along about 1839, 1840, and 1841? Did it or did it not have much value?

A. Well, it hadn't great value.

Q. Could you give an idea as to what the value of this ground was at that time?

A. I don't think that that square would have brought over 3 or 4 cents a foot; I should think 3 cents; anyhow, 3 or 4 cents.

Q. Did they reckon the ground by the foot then?

A. Yes, sir; we bought our ground for a mill a foot where we lived.

Q. Do you recollect what that property was worth about that time?

A. About three or four cents a foot.

Q. Do you think it was worth eight or nine thousand dollars?

A. I could not say.

Q. Could you not say, from your knowledge of other property bought and sold in that neighborhood about that time, what land was worth?

A. Well, sir, I may be mistaken about the price I have stated, because Thomas Corcoran offered me property around there for two cents, but what that year was I cannot say. I cannot say
115 whether it was about that time we are speaking of or previous to it. I was not dealing in real estate, and it was a question that never came up with us, what the property was worth.

Q. Do you know of your father buying property about that time in that neighborhood?

A. He bought long before that; he bought previous to that time. All the property he bought was long before that.

Q. Do you know of his having property offered to him in that locality about that time?

A. No, sir; but previous to that.

Q. How long previous?

A. Six or eight years.

Q. What do you know about that?

A. Col. Bomford offered to sell him a place opposite there. It was a house on a half a square, and he offered it, probably, for nine hundred dollars. It was on R street between 16th and 17th streets. That was before 1840.

Q. Do you know anything about square 93? Do you know know anything about an offer of sale of that property
116 having been made?

A. Yes, sir.

Q. What do you know about that?

A. I know that it was sold to Mr. Linkins' brother for $900.

Q. At what time or about what time was that?

A. I could not say.

Q. Fix it as nearly as you can.

A. That must have been somewhere in 1830. I could not recollect. I know I was quite young then, and he sold it to Mr. Stoughton for $7,000.

Q. Do you know of any property in that neighborhood being sold for two or three or four cents a foot as early as 1839 or 1840?

A. I don't recollect exactly.

Q. About what time was this property you have already referred to offered to you? I want your knowledge with reference to the time.

A. That was six or eight years previous to this sale made to Mr. Linkins. It was in the neighborhood of 1830. He offered it to father for $900. Yes; that was about 1830.

117 Q. Were you old enough to understand such matter at that time?

A. Well, I paid so little attention to things of that kind that I would not like to come within five or six years of the date.

Q. You have mentioned the price of property in that location. Now, I want to know if you know of any ground in the neighborhood of the square we have been talking about selling for the sum you have mentioned, two or three or four cents a foot, as early as 1839 or 1840?

A. I could not say that any sale was made at that price, but I know Mr. Corcoran offered me ground for that.

Q. At what time was that?

A. That was about 1830.

Q. That was offered for sale to your father, as I understand you?

A. Yes, sir.

Q. Now, do you know anything of ground changing hands there as early as 1839 or 1840 for three or four cents a foot?

A. No; I cannot say that I do.

Q. Well, when you fix that price you are not basing it upon any sale of which you have knowledge that was negotiated about

118 the time referred to?

A. No, sir.

Cross-examination.

By Mr. DAVIDSON:

Q. From what year did you say Mr. Abbott was in possession of this property?

A. He had it from 1840 to 1861, I think.

Q. When do you think his hedge was built?

A. That was there long before he got the property.

Q. How tall was it, if you remember, at the time he took possession?

A. I remember some portions of it was as tall as the ceiling of this room we are in.

Q. When was that?

A. That was some time between 1840 and 1850.

Q. As early as 1840 do you think the hedge was as high as this ceiling?

A. No; it was not. I do not suppose it was more than about six feet, because they kept cutting it down. They would cut it down every now and then. On the north and west sides they
119 did not pay much attention to it, and it grew up very high in places.

Q. How long do you think that hedge has been planted?

A. I could not say. It might have been planted thirty or forty years. Hawthorn lasts a long time, and it might have been planted by the early settlers thirty or forty years before Mr. Abbott came there.

Q. How could you recognize this square as being located between the streets you have mentioned? Was there a division of the streets—was there at that time—were the streets marked off?

A. No, sir.

Q. Well, how do you know where this square was situated?

A. I know as well as the rooms in my house. Boundary street ran along under the edge of the hills, and made right around there. I cannot say how far it went. I know it went as far as Seventh street, and think it went down to about Fifth street, and then might have continued in a different direction further on;
120 but I know Boundary street ran along in that way, and Mr. Abbott's square was there, and a triangle square was between him and Boundary. There was a lane on the west side of Mr. Abbott's place, and Mr. Ricard's place also ran down to T street, and then the lane made out to the grave-yard. Mr. Abbott had a bridge across the stream there, and as his place used to run up to near Boundary street he had to leave a lane about fifteen feet wide to come down to his place between Boundary and R streets. There was no opening in that range of square, as it was all enclosed. Sixteenth street was open all the way out, and the other part—I think the east side—of Abbott's place was an open field—what we called the slashes.

Q. How could you tell that Seventeenth street ran on the east side and Eighteenth on the west if, as you say, there was just an open field out there?

A. Well, sir, the way is this: Mr. Abbott's ground was on this lot south of Mr. Ricard's, on Seventeenth street.

Q. How do you know that?

121 A. I know this because my father told me often about the murder there of Mr. Devan; showed me where he lived, and I know the place.

Q. Then you make this statement only upon what your father told you?

A. I know the place where the streets came in. I was old enough to know that the square was between Sixteenth and Seventeenth streets.

Q. How do you know there was only one square there?

A. I knew from my own knowledge and what I learned, the same as anybody else.

Q. But squares differ in length, some are longer than others?

A. This was one of the longest squares, I believe, in the city, or as long as any north, east, and west.

Q. How do you know that the enclosure surrounded the entire square?

A. I saw it.

Q. How do you know that it took in the entire square? Might it not have left some of the square out, or taken in more than the square?

A. No, sir; Mr. Ricard owned the triangle, and bought it,
122 and built on it so as to come out to the edge of the square, or take in a little of the street.

Q. Was that on the north side?

A. On the west. I presume whoever planted that hedge planted it on the building line.

Q. Do you know that as a fact?

A. I could not say whether the fence or hedge was built on the building line, but I judge so from the space between the house and the fence.

Q. How do you know that this square was bounded by the streets you have mentioned? *It* not your knowledge in this respect based more particularly upon information obtained since the time you refer to?

A. No, sir; because I recollect that Eighteenth street ran up to Massachusetts avenue, and Nineteenth street ran up to the hill clean to Boundary. I know that Nineteenth street ran up to the circle—the P-street circle, as you call it now. That was then enclosed. I have raised cabbage and potatoes on that square myself. The entrance we had into Nineteenth street, which ran from Nine-
123 teenth to Twentieth, and the road then crossed Castle Stewart, which lot was not enclosed then.

Q. That ground there was all swamp land then, was it not?

A. No, sir; Mr. Abbott's place was high and dry, with the exception of the northeast corner; there was a small space there of swamp that extended into the slashes; that square was dry with the exception of a little part; between the next square and P street was swamp and low.

Q. How did you know that this square was between T and U streets?

A. I could not say exactly whether it was between T and U. I have not taxed my mind about it. I know the square that Mr. Ricard had and the square that Mr. Abbott had pretty well. Mr. Ricard had the part on U street fenced in himself. Boundary street ran in this direction (indicating), here is Seventeenth street (indicating), and Mr. Ricard's place ran out here and came in this way (indicating). His was a triangle square, and his father's place
124 was over here (indicating), and down here (indicating) was Mr. Abbott's place. Now, Mr. Abbott had the hedge there (indicating); this I know was Eighteenth street, but about U street I could not say. To all appearances Mr. Abbott had a hedge on the line here (indicating). The ridge is there now, and can be seen.

Q. Do you know that Mr. Abbott's ground extended all the way down to T street?

A. Yes, sir; because it took in the whole square.

Q. How do you know that?

A. I know by the lane that went through there, and here (indicating) was the entrance to his place, and here (indicating) was where the bridge crossed the run, and both of them had use of that bridge.

Q. You say that place ran down to T street?

A. Yes, sir.

Q. How did you know that was T street?

A. I could not say positively that I knew it was then T street, but I know now and years back that it bordered on that street. I
125 knew the squares then, too.

Q. There were no squares then, were there, in that location?

A. When we were boys I don't suppose we knew exactly; but when you know by what places a ground is bounded you afterward find out what streets they were.

Redirect examination.

By Mr. HILLYER:

Q. I understand, Mr. Graham, that you are now familiar and have been for a number of years with this square between 17th and 18th and T and U streets?

A. Yes, sir.

Q. Do you remember the number of it?

A. 151.

Q. And I understand you to say that you have been familiar with it during all this period of which you have spoken?

A. Yes, sir.

Q. Do you know that that is the same ground which Mr. Abbott had enclosed?

A. I do, sir; positively.

126 Q. You spoke of a hedge. Do you know whether the hedge ran all the way along Eighteenth street, the length of that square?

A. No, sir; I don't think it did. I don't think his square—although I may be mistaken—was exactly a square or not; but the way he had it fenced in, on account of the run, he had to leave the run out, and had his fence on the east side of the run. The branch coming around there took a part of his corner off.

Q. I want you to give your recollection as to whether that hedge covered the west side or only the north and east sides.

A. I think it covered most of the west side, too, from the bridge up.

Q. What was there on the other portion that it did not cover on the west?

A. It was a fence.

Q. Was there some sort of fence on that side?

A. Yes, sir.

Q. Now, do you know whether that hedge came clear down on the east side?

A. No, sir; the hedge didn't come within—I could not say
127 how many feet. I believe I could all but go to the very place where it stopped.

Q. Have you been on the ground within a month or two?

A. I have.

Q. Are the marks of that hedge remaining there now?

A. The ridge is there on it on the east side, and I think I could walk along the ridge on the north side.

Q. Do you find any such ridge on the west side?

A. No, sir; I think I cannot; but I have not looked, and cannot say positively.

Q. Coming to the east side, did the hedge come clear down as far as T street?

A. I think it did.

Q. About how far did it come down?

A. I don't think it came within thirty or forty feet. I think there was a four-rail fence there connected with the other.

Q. As I understand you, when Mr. Abbott was occupying this ground as you have spoken of, in connection with the hedge there was also some fencing, was there not?

A. Oh, yes. To the best of my knowledge there was a
128 fence the whole way around the east, north, west, and south sides. Some places there would be three rails and some places four. The hedge had grown into the fence and in some places you could hardly see the fence at all.

Q. When you first knew of this place was the hedge itself sufficient to keep out stock?

A. Yes; keep out horses and stock, but perhaps not hogs and dogs.

Q. Was there any reason for having this fence in addition to the hedge?

A. There was not. That fence was put there when the hedge was small, and the hedge grew around the fence in that way.

WM. S. GRAHAM.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

129 *Testimony of Francis Linkins.*

FRANCIS LINKINS, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, occupation, and residence.

A. Francis Linkins; I am about fifty-seven years of age, or will be next birthday; I am a butcher by trade; I live at 1743 T street, Washington, D. C.

Q. How long have you lived in Washington, Mr. Linkins?
A. I have lived in Washington all my lifetime.
Q. Where did you reside in the years 1840 and 1841?
A. In 1840 and 1841 I was with my brother.
Q. Where did you live?
A. He boarded at Mrs. Frear's, on Twentieth street between K and I.
Q. How old were you about 1840?
A. I was quite young, and went into the butcher business when ten years old. I know I was going to school, and they took
130 me from school and I staid with him from when I was ten years old and never went to school afterwards. I know I was very small at the time.
Q. If you are fifty-seven years of age, in 1840 you were about twelve years old. Where were you living then?
A. I was with my brother.
Q. At that time did you know the piece of ground between Seventeenth and Eighteenth and T and U streets?
A. Yes, sir; and I have been on it thousands of times.
Q. Who, if any one, at that time occupied that ground?
A. A man by the name of Alec. Ricard, and a colored man by the name of Mr. Rounds occupied it also.
Q. Did you know Mr. Abbott?
A. I knew him very well.
Q. Did you know him when a boy?
A. Yes, sir; and I had a good deal of dealings with him in the market.
Q. Do you know of his occupying that ground?
A. Yes, sir; and know when he first got it.
Q. Well, when was it?
131 A. That was about the time I was, I reckon, about twelve years old. He took possession after old man Rounds died. The house was torn down, and when Mr. Abbott took the place there was no house on it at all.
Q. That you fix at about the time you were twelve years old?
A. Yes, sir.
Q. Was the ground at that time enclosed by him?
A. It was enclosed when we got it and it was enclosed when old man Rounds lived there, and also when Mr. Ricard lived on the place it was enclosed.
Q. When you saw Mr. Abbott at that place was or was it not enclosed?
A. Yes, sir.
Q. What was the character of the enclosure?
A. There was a hedge fence running right up back of T street, and I think it ran from Seventeenth to Eighteenth streets and from Seventeenth street up to as far as what they called Riggs street, and there is where it stopped. It stopped right near those two big houses belonging to Douglass.
Q. You speak of the Seventeenth-street side?
132 A. Yes, sir.

Q. Then it did not come down to T street?

A. I do not think, to the best of my knowledge, that the hedge fence reached T street; but T street was not open then.

Q. What was the case with the street on the north; was that enclosed?

A. There was a plank fence running along there; there was a running fence of two planks.

Q. Was there not a hedge there?

A. No, sir; there was no hedge at all above.

Q. How was it on the west side?

A. That was an old post-and-rail fence that went to about Eighteenth street or along Eighteenth street. You know there is a locust tree that stands up at the corner of Eighteenth and Boundary, on that square, and that fence ran from T street up to Boundary, and at the corner of T and Eighteenth streets a stream of water ran across T street, went down Eighteenth and connected way down here towards the school building—way down Sixteenth street.

Q. What was there on the south side—that is, the T-street side?

133 A. That was a hedge fence, and through that hedge there was a fence of two or three boards running through. There was a good deal of cattle and horses running about there at that time; the people used to turn their cattle out without hardly looking after them, especially horses, mules, and cows, and in the spring you would have to look around a good deal for them to find them, as the grass was that high (indicating about three feet), and this hedge was very secure, and in some places a hog could not hardly get through. I know we used to go out and set fire to the slashes on Sundays, and it would burn all day long.

Q. You fixed the date as early as 1840 that you saw Mr. Abbott occupying that place?

A. Along about that time; after Rounds died. I could not say exactly that it was that time or not, but I know he occupied the place a short time after the old man died.

Q. Could you say within one year of the time? Was it as early as when you were thirteen years old that you can

134 state positively you saw Mr. Abbott there?

A. Yes, sir; to the best of my knowledge it was about then. I say so because I know I went out and had a talk with Mr. Abbott very often and was very well acquainted with him, and sold him many pounds of meat when he had Mr. Cowling's stable, which is now on G street between Thirteenth and Fourteenth streets, north side, near the church there.

Q. At that time what was Mr. Abbott doing with the place?

A. He only came out when it was convenient to do a little gardening, to sew a few oats, and cut a little grass.

Q. Was he cultivating the place?

A. He was a little, but just for his own use.

Q. Was it then enclosed to keep out stock?

A. Just enclosed as it was before. Where there was a plant or anything out of order the old man fixed it up.

Q. Was it so enclosed at that time as to turn stock and preserve the crops he was cultivating?

A. Yes, sir; that was done just that way to keep the stock
135 out. A great deal of stock fed from where the British minister's house is now, all the way to North Capitol street; that was open, and stock ran all the way through there. I know we use to catch leeches out there.

Q. How long do you know of this occupation on the part of Mr. Abbott continuing after you first saw him there?

A. He occupied it until the war, I know that, and after the war broke out I left out there and worked for the Government.

Q. Do you know whether he occupied it and cultivated it and kept it enclosed during this entire period?

A. He rented it to a man by the name of Beckett, and he did. The soldiers came around there and ruined him so that he went away.

Q. Do you know whether either Mr. Abbott or some one under him, who claimed to occupy this land for him, cultivated the place and kept it enclosed all the periods, say, from 1840 or 1841 until the breaking out of the war?

A. Yes, sir; it was enclosed and cultivated during that period.

Q. Was it cultivated and kept enclosed all the time Mr. Beckett was there?

136 A. Yes; all the time of the war.

Q. Between the two, either Mr. Beckett or Mr. Abbott, the place was cultivated and enclosed?

A. Yes, sir; one or the other. Nobody else ever attended to it after Mr. Beckett left it.

Q. Did you know of any one else, during this period we are speaking of, claiming to own the ground except Mr. Abbott?

A. Never in my life.

Q. How was the ground spoken of?

A. Well, there were no houses around there then, except one building occupied by Mr. Tenley. Mr. Ricard's little house and Alec Ricard's little house was inside of this lot of Mr. Abbott's. Old man Ricard lived at the corner of Eighteenth and Boundary. He owned a little triangular square there; he attended to a little garden there.

Q. You now speak of the ground lying north of Mr. Abbott's place?

A. Yes, sir.

Q. Do you know at what time Mr. Rounds died?

A. No, sir; because I was quite young.

137 Q. I understand you to say that Mr. Rounds had a house upon this ground, or occupied a house there?

A. Yes, sir; he lived right opposite to where I have a stable now.

Q. Do you know how soon after Rounds' death or after he ceased to occupy that ground Mr. Abbott's possession commenced?

A. I don't think it was over a couple of years.

Cross-examination.

By Mr. DAVIDSON:

Q. You said, Mr. Linkins, that Mr. Abbott had this ground enclosed. Do you mean he enclosed it or Mr. Rounds enclosed it?

A. He did not enclose it. It was enclosed when I first knew that man Rounds. Whether he enclosed it or not I could not tell you, but it was enclosed when he lived.

Q. Enclosed when Mr. Abbott came there?—

A. Yes, sir; just as when old man Rounds lived there; but whether old man Rounds rented the place or it belonged
138. to him I could not tell you, but he was there; Alec had a house on the same ground, and old man Ricard had a little place on the other side of Eighteenth street, corner of Boundary.

Redirect examination.

By Mr. HILLYER:

Q. You say that this place was enclosed before Mr. Abbott took possession?

A. Yes, sir; before he bought it. The hedge fence enclosed part of it.

Q. Do you know, before he got it, what the character of the fence was around the other part?

A. Just the same as he got it.

Q. Do you know what he did to the fence after he got it?

A. I don't know more than when a board or anything got loose he would fix it so as to keep stock out of his place. There was not another fence around except Mr. Ricard's fence, running from Nineteenth to Seventeenth streets.

Q. Then Mr. Abbott kept up the same character of fence that was on the place before he got it?

139 A. Yes, sir.

Q. Was the fence kept in repair during the entire time that Mr. Abbott had the place?

A. Yes, sir; and the same way when Mr. Beckett had it, because he was obliged to keep the stock off, and there was a good deal of stock running around there.

Q. Do you know the condition of the fence when Mr. Abbott took charge?

A. It was no extra fence at all, just two or three boards here and there wherever there was a hold, to keep cattle out.

Q. Do you know whether or not Mr. Abbott was required to do anything to make it stock-proof?

A. He never put in any improvements on it, except on the edges of the slashes, or maybe to cut the hedge down. There were trees around there then enough to make a fence all around.

Mr. DAVIDSON: Mr. Beckett never lived on this property, did he?

A. No, sir; nobody ever lived on it after Mr. Abbott bought it.

F. LINKINS.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

140 *Testimony of C. M. Wagler.*

CATHERINE M. WAGLER, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. RALSTON:

Q. Please state your name, age, and residence.

A. I am 73 years of age; my name is Catherine M. Wagler; I have always resided here in Washington and was born in the square below me here.

Q. Do you remember a square of ground said to be formerly owned by Mr. Abbott, situated between 17th and 18th and T and U streets, in this city?

A. Yes, sir.

Q. When were you out there and first remember having seen this square?

A. Well, I suppose about the year 1840.

Q. Who had the square in charge at that time?

A. I don't know who had it in charge. There was no one there except an old woman who lived on it, and her husband had a little shanty on it.

Q. Do you know for whom she worked?

A. Well, I don't know that she worked for anybody in particular.

141 Q. What conversation, if any, did you have with her at that time?

A. I asked her had she bought the ground, and she said no; that Mr. Abbott asked her to stay there; and I asked her what Mr. Abbott and she said Joseph Abbott.

Q. Was she living on the ground at the time of this conversation?

A. Yes, sir.

Q. Please tell all she said about this square.

A. She said she could remain there and take care of the garden as long as she chose to stay.

Q. Who told her that?

A. She said he told her.

Q. Who do you mean by he?

A. Mr. Abbott.

Q. Was she taking care of the garden?

A. Yes, sir; taking care of the garden.

Q. What else was said by her about that square?

A. Nothing else particularly. The house she staid in stood on the street, and she did remain there until, I believe, he died.

Q. What street did she say it stood in?

142 A. I asked her, and she said M, and I told her that the Methodist church was on M St.

Q. Did she say anything about the way in which Mr. Abbott paid her for taking care of that square?

A. No; she just said she was staying there and raising pigs and chickens and such things as that.

Q. How do you fix the date in the year 1840?

A. It was about that year, because my husband died in January, 1843, and it was about two years before he died.

Cross-examination.

By Mr. DAVIDSON:

Q. Where did you say this square was situated?

A. Between 17th and 18th and S and T, near the boundary.

Q. How could you fix the square there?

A. Well, you know the square wasn't measured out then, and, of course, it is since that that I know the streets.

Q. How do you know this square was bounded by these streets?

A. I never knew until late years the streets there.

143 Q. You do not know, then, that it was between those streets that the square was situated?

A. You know the streets were not cut out until the Board of Public Works went out there. There used to be a branch run down 18th St., and that, I believe, has been sewered over.

Redirect examination.

By Mr. RALSTON:

Q. What was the first street down from Boundary that ran this side of the square?

A. Well, I think 16th St. came first coming down from Boundary.

Q. Coming down from Boundary, which was the first street you would meet, T or U?

A. T street, I think, was the first.

Mr. HILLYER:

Q. You spoke of this square as being between 17th and 18th Sts. and S and T Sts., do you not?

A. Yes, sir.

Q. Now, what street comes next to Riggs St.?

A. S street, I think.

144 Q. I mean coming down from Boundary, you come first to Riggs St., do you not?

A. No; I think T street and then you come to Riggs.

Q. And then you come to S street, you think?

A. Yes, sir.

Q. Now, if it turned out that the first street you came to was U, and then you came to Riggs, and then, keeping on, you came to T, the ground you have been speaking of would be between T and U streets, would it not?

A. Yes, sir.

Q. Then the northern boundary of this square, if I understand

you, is the first street you meet coming south after leaving Boundary street?

Mr. DAVIDSON: I object to the form of the question.

A. Yes, sir.

CATHERINE M. WAGLER.

Subscribed and sworn to before me this 17th day of November, 1885.

L. CABELL WILLIAMSON,
Examiner in Chancery.

145 *Testimony of Aaron Talbot.*

AARON TALBOT, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. RALSTON:

Q. Please state your name, age, occupation, and residence.

A. I am 73 years of age and am living on New Hampshire Ave. bet. S and T Sts., No. 1717, in this city. I have no occupation at present, but was for a long while sexton of the grave-yard when I was at work.

Q. Where did you live about the years from 1835 to 1840?

A. I think I lived in Britton's row.

Q. Where is that?

A. That is, I think, on I St., just back of the Catholic church.

Q. During those years did you have occasion to go out to the square between 17th and 18th and T and U Sts.?

A. I used to go out there gunning pretty much every Sunday.

Q. Were you acquainted with Mr. Rounds, who is said to have lived on that square years ago?

A. Yes, sir.

146 Q. Do you know when he died?

A. I don't know the year he died in. I know I was at the funeral, because I never forgot about a remark made by a lady. It was in peach time and——

Q. Never mind about that. Give the date as nearly as you can.

A. Well, I couldn't say what the time was.

Q. Do you recollect who was present?

A. Let me see. I think as near about the time I was working at Mr. Colman's, at the time the Mexican war was.

Q. In what year were you married?

A. I was married in September, the year Gen'l Harrison took his seat.

Q. That was about 1840, was it not?

A. Yes, sir.

Q. At that time who had possession of the square bet. 17th and 18th and T and U streets, if you know?

A. Mr. Abbott, because old man Rounds and a man lived in the

house with an old woman by the name of Williams, and then I was better acquainted with the property than I was when the old man was living, because the old man wouldn't allow anybody to be walking around on the place.

147 Q. What did Mr. Abbott use to do with that square which you speak of?

A. Cut grass and raise cabbages and things like that. I saw him working around there in that way.

Q. Did you see him working around there before the time of your marriage?

A. Yes, sir; when I was there before and afterwards.

Q. Did Rounds die before you were married?

A. No, sir.

Cross-examination.

By Mr. DAVIDSON:

Q. How did you know where this ground was situated, Mr. Talbot?

A. How do I know, sir?

Q. Yes. Mr. Ralston fixed it for you out at 17th and 18th Sts.

A. I have been walking over the ground, I suppose, for 55 years.

Q. You say you used to go gunning out there at that time?

A. I used to gun out there and leave my gun with Rounds, because I didn't want to fetch it into the city on Sunday.

Q. When you were gunning out there, were there any streets?

148 A. Only marks of streets. I could see the mark of a street on the south side where the hedge was on T street. That hedge ran from the west down to 17th.

Q. How do you know that was T street?

A. Well, it was called T at that time, from 14th street out.

Q. Did the hedge run from 14th street out?

A. No, sir; from 17th St. up to 18th.

Q. How do you know it ran from 17th to 18th streets?

A. It always went by that name, just the same as people call me Aaron. I don't know that that is my proper name, but I always answer to it.

Q. Did they call it 17th street then?

A. Yes, sir.

Q. The street was well marked out then and you could tell just where the street was at that time, could you?

A. On T street.

Q. I refer to 17th and 18th streets.

A. Oh, from T street there was an old kind of a road running up through the slashes up to U street, and then we used to turn to U street and go right up to what they call Champlain avenue

149 there now. There used to be an old barrel spring there, where there was good water. U street ran up from 17th to 18th street and there it stopped, because there was a branch coming down there which ran from Boundary about to where Mr. Ricard had a

house or shanty, down to the back of Mr. O'Neil's place there, and continued and ran down until it got to L street. Oh, I was perfectly conversant with the ground. I live right there.

Q. Well, Mr. Abbott never lived on the place, did he?

A. No, sir; but I used to see him going there often. I worked in that neighborhood.

Redirect examination.

By Mr. HILLYER:

Q. Do I understand you to say that Rounds died before or after you got married?

A. I think Rounds must have died before I was married. I don't know what the particular necessity was of my going out there
150 after I was married. I know I was at the funeral. I know who preached the funeral sermon and all about it.

Q. Then, your best impression is, I understand, that you think Rounds died before you got married?

A. Yes, sir.

Q. But you are not certain as to that?

A. No, sir; I am not to say certain. I cannot be positive about it.

Q. I understand you to say that in 1840 you saw Mr. Abbot about the square we are speaking of?

A. Yes, sir.

Q. Was Rounds dead at that time?

A. Yes, sir; Rounds was dead then.

Mr. DAVIDSON: I object to that question. I do not remember that the witness has testified to that. If he has not testified to it, I object to the question.

his
AARON x TALBOT.
mark.

Subscribed and sworn to before me this 17th day of November, 1885.

L. CABELL WILLIAMSON,
Examiner in Chancery.

At this point the further taking of testimony was adjourned until Tuesday, November 24th, 1885, at 2 o'clock p. m.

L. CABELL WILLIAMSON,
Examiner in Chancery.

151 WASHINGTON, D. C., *November 24th*, 1885—2 o'clock p. m.

Met in accordance with adjournment.

Present: Jackson H. Ralston, Esq., for plaintiff; Eppa Hunton, Esq., and Henry Wise Garnett, Esq., for defendants.

Testimony of Samuel R. Tinkler.

SAMUEL R. TINKLER, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. RALSTON:

Q. Please state your name, age, residence, and occupation.

A. Samuel R. Tinkler; I am between 55 and 56 years of age; my business is that of a carpenter by trade, though I am not working at that now, but am keeping a little shop at 7th and R streets, in this city.

Q. Where did you live in the years 1840 and 1841?

A. We lived on 16th and Q Sts., Washington, D. C., right close to where Mrs. Allen lived. They lived on the next square to us.

Q. At that time were you familiar with the square in this city located between 17th and 18th and T and U streets?

152 A. That is Abbott's place. Yes, sir; I played through it a many a time and ate many an apple off it.

Q. Who had possession of that square in the years 1840 and 1841?

A. Mr. Abbott had it then.

Q. What did he do with the square at that time?

A. A part of it he had in timothy—made hay for his cows. He had cows and used to work it. He had a nice apple orchard there. Sometimes he had vegetables there. Just whatever he felt like putting in, I suppose.

Q. Were you acquainted with Mr. Abbott at that time?

A. Yes, sir.

Q. What was his occupation?

A. He kept cows, and he kept a sort of livery stable here where he used to live, on G street, below Foundry church, which was at the next corner.

Q. At the time referred to was the square enclosed?

A. It was enclosed with a thorn hedge.

Q. Describe the enclosures generally on each side of the square.

153 A. Well, he had it enclosed in the old English style, with a ditch around the outside of the hedge so as to keep the cattle from getting in through it. It was very good, too. I used to hunt rabbits around there.

Q. Tell us about the fences, now.

A. There was one gate to go into the square from 17th street; like here (indicating) was the corner, and you came up here (indicating), I suppose, probably somewheres about as far as from here to 14th street—probably that distance from 17th street—he had a gate to go into the square. Then there was a gate on the opposite side to go out the other way, where Alick Ricard lived—between that and the boundary.

Q. Did Mr. Abbott keep up the fences—keep the square enclosed while it remained in his possession or under his supervision?

A. Oh, yes—that is, as far as I recollect. I don't know how long he had the place after I left there. That I couldn't tell. I used to go around there, and then I knew he was there.

154 Q. How many years has it been since you were around there?

A. I couldn't tell exactly as to the time. I recollect somewheres back to about 1840. I don't know whether it has been that long or more since I went around there. I know when I left there I went to the 1st ward, to my sister's. If I had thought I would be called upon for that information I would have went over to my sister's before I came here and seen her. She knows when we left there exactly.

Q. Where were you working or located about the time referred to—1840 and 1841—that made you familiar with the situation of this square and the manner in which it was operated?

A. Well, we kept a milk dairy, and our cows used to run out in the slashes and around that way. I had to go after them, or my brother did, who was two years younger than me, and it was generally my lot to fetch the cows up so that they could be milked in time to carry the milk out in the evening; then I used to hunt around there, too. I had my dog and my gun, and I would

155 rather go hunting than eat.

Q. Was this enclosure that you speak of around the square continuous—did it enclose the entire square?

A. Oh, yes; he had the whole square enclosed. If he hadn't he could not have kept his cows in. If any part of it was down, when they got ready the cows would walk out. On the 18th-street side there was a branch that ran right through his place, just before you got to 18th street. Then he had a fence around along there between that and where old man Ricard lived.

Cross-examination.

By Mr. GARNETT:

Q. Mr. Tinkler, how old do you say you are?

A. Well, I suppose I must be—well, I cannot recollect from about seven or eight up to about—well, I could not say exactly how old, because that I didn't pay any attention to; but I recollect of his having the place whilst we lived there by seeing him always being around and through it.

Q. The question is, How old are you now?

156 A. Between 55 and 56, or somewheres about that.

Q. When did you or your family first move out in the neighborhood of this property?

A. When did we first move out there?

Q. Yes.

A. We moved out there, I suppose, about 1834 or 1835.

Q. What was the condition of the property at that time?

A. Do you mean this place we are speaking of now?

Q. Yes.

A. Well, it was enclosed from when I first recollect or paid any attention.

Q. I ask if you do recollect. Do you recollect the condition of the property at that time—1834 and 1835?

A. I recollect as far back as I can go on it.

Q. The question was when did you first move out there, and you said about 1834 or 1835. Now, I want to know whether, when you first moved out there, you recollect the condition of the property at that time?

A. Well, it had a thorn hedge around it.

Q. At that time?

157 A. Yes, sir. How long he had it before that I don't know and can't tell.

Q. Around how many sides of this property was there a thorn hedge at that time?

A. It had a thorn hedge on the 17th-street side and on this side—on the south side.

Q. Then the thorn hedge was on two sides?

A. Two sides, and I think a part on the other side next to the boundary.

Q. How about the balance?

A. I think there was a fence between Ricard's place and 18th street. There was no thorn hedge there, as I can recollect.

Q. How much property was contained within this fence and hedge?

A. Well, I couldn't tell that.

Q. Were the streets laid out at that time?

A. No, sir.

Q. There were no streets out there then, were they?

A. Very few.

Q. You said you used to go hunting on this property. Now, was not this property pretty well overgrown with underbrush?

158 A. Oh, it was slashes between 16th and 17th streets.

Q. Now, is it not a fact that if you wanted to find 16th street at that time you would have had to employ a surveyor for that purpose?

A. Oh, no; 16th street was open.

Q. Well, between what streets was this property?

A. Between 17th and 18th.

Q. Suppose you wanted to find out when you struck 17th street, how would you do it?

A. Oh, it was all commons.

Q. Was it not all commons up there at the time you speak of with reference to this property?

A. It was at one time.

Q. I speak of when you moved out.

A. Well, you improve in any place. Where to-day you find a lot open, to-morrow you find it closed.

Q. In 1834, when you moved out there, the question was whether west of 16th street it was not all commons and no streets were laid out at that time west of 16th street.

159 A. It was all commons then; it was all open.

Q. And then you came to this enclosure?

A. Yes. All except Abbott's place was open.

Q. Now, can you tell really what ground that enclosure covered?

A. I couldn't.

Q. Now, was not that just the same state of affairs up to the time you left there?

A. What—his place?

Q. Not only his place; but what I mean to say is that the land out there was all commons and was in just the same condition when you left there as when you went out there, was it not?

A. Oh, no.

Q. What had been done in the meantime?

A. Well, a Frenchman by the name of Burbach bought a piece just this side of Abbott's, on 17th street, and he fenced it in.

Q. He fenced that in, did he?

A. Yes. What he bought he fenced in.

Q. Was there any other change up to the time you left?

160 A. He bought that place, fenced it in, and built himself a little two-story brick, and died there. He married Utermehle's daughter down here.

Q. Now, was there any other change there between the time you went out to that location and left?

A. I don't recollect, because it never bothered my head much, and I never paid much attention.

Q. I suppose not, you only being a boy at the time. Now, did Mr. Abbott live upon this property referred to?

A. Oh, no, sir.

Q. What did he have in that lot?

A. Timothy and apples, fruits and trees, and used to keep his cows out there.

Q. He didn't keep his cows in the timothy field, did he?

A. Well, after he cut his timothy he put the cows in the field.

Q. Well, occasionally he put the cows in. He did not keep the cows there regularly, did he?

A. No, sir; not regularly.

Q. He used to use it as a field to grow crops, and occasionally would turn the cows in. Is that what you mean?

161 A. Yes, sir; because he kept a livery stable and raised timothy.

Q. Then, as I understand, you could not tell how much land was in that enclosure?

A. I couldn't tell how big the square was.

Q. Do you know whether that was a square?

A. It ran through from 17th to 18th streets.

Q. Do you mean from where 17th street was at that time?

A. I can judge pretty well where it was.

Q. Was 17th street laid out at that time?

A. Well, it was all laid out, but not opened.

Q. Was there any way by which you, as a boy hunting out there, could tell when you were on 17th street?

A. Certainly.

Q. How?

A. From the corner-stones at the curb—not a curb, but you could find the corner-stones at the edge of the square.

162 Q. Then the only mark to tell — the streets were were the corner-stones at the edge of the squares, which were put there years before, when the city was originally laid out?

A. You could tell by a man's fencing; a man would not fence a street in.

Q. I asked you if there was any other way by which you could tell the streets except by the corner-stones.

A. I knew when I was on 17th street just as well as I knew anything else.

Q. Did you hunt on 17th street?

A. Yes.

Q. Was not the slashes and underbrush there just the same as everywhere else in that locality?

A. Certainly; but that didn't make any difference.

Q. How could you tell when you were on 17th street?

A. Certainly I could tell. I could stand and look into town and tell by the streets that were opened.

Q. Then you could only tell when you were on 17th street by looking into town and judging by where the streets commenced in town? You estimated when you was on 17th street?

163 A. Yes; and then I took it from our square, that was fenced in. It used to belong to the Evans, and the old house now stands where we lived at one time, right on 17th street; and we had 17th street at that time fenced in there. You could not get away from that.

Q. You state you had 17th street fenced in. Do you mean to say you fenced the street in?

A. Certainly, until it was opened up.

Q. How far from this place did you live?

A. We lived at one time on R street and 17th, when we had Mr. French S. Evans' place; we had two squares. His square was between 17th and 18th streets, and the square I speak of was on this side, from 16th to 17th, running from R to S.

Q. Between what streets was Mr. Abbott's place?

A. Abbott's place was between—let me see; R, S—between T and U, I think. I am not certain about that. Between T and U; I think that is where it is.

By Mr. HUNTON:

Q. Mr. Tinkler, you say you moved out in the neighborhood of this lot about 1834 or 1835?

A. Somewheres about that.

164 Q. Who had possession of this lot when you moved out there?

A. I could not tell. I suppose at that time I was too small to pay attention.

Q. Do you recollect any change of possession after you moved out there?

A. Of his place?

Q. Yes.

A. He had it as long as I paid any attention to it.

Q. So that you state from 1834, as long as you remained out there, Mr. Abbott had possession of this place?

A. It must have been somewheres about that. I was small then, but when I got old enough to know I knew he was there.

Q. By what right did you occupy these two lots you have spoken of, between 16th and 17th streets?

A. Rented them; at least, my father did. I had nothing to do with it.

Q. How do you know Mr. Abbott occupied this lot we have been speaking of?

A. I used to see him there.

Q. And that is all you know about it?

A. Yes; and he used to talk with my father; he used to
165 be going backwards and forwards all the time, and I have seen him at work there.

Q. How often?

A. That would be impossible for me to tell you.

Q. When did you move away from that neighborhood?

A. I don't know exactly what time it was when we moved from there.

Q. State as nearly as you can.

A. It was after my parents died.

Q. You spoke with reference to the possession of this lot about 1840, 1841. Can you say anything about it afterwards?

A. Not to my recollection.

Q. Do you know anything about this hedge remaining on the lot after 1840, 1841?

A. The hedge was around the place as long as we staid out there.

Q. But you cannot say that you stayed there after 1840, 1841?

A. I don't exactly know what time it was we left.

Q. Can you say that hedge remained there after 1840 or 1841?

A. I wouldn't say that it did; there might be some of it around there now for what I know.

S. R. TINKLER.

166 Subscribed and sworn to before me this 24th day of November, 1885.

L. CABELL WILLIAMSON,
Examiner in Chancery.

At this point the further taking of these depositions was adjourned until Friday, Nov. 27, 1885, 2 p. m. same place.

L. CABELL WILLIAMSON,
Examiner in Chancery.

167 WASHINGTON, D. C., *November 27th*, 1885—2 o'clock p. m.

Met pursuant to adjournment.

Present: Counsel for plaintiff and defendants.

Testimony of Joseph R. Quinter.

JOSEPH R. QUINTER, Sr., a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. RALSTON:

Q. Please give your name, age, residence, and occupation.

A. Joseph R. Quinter, Sr.; I was originally a glue manufacturer; I was 76 years old my last birthday; I live in Washington, D. C., No. 1323 Vermont avenue.

Q. Where did you reside in the year 1840?

A. On 20th street.

Q. What place on 20th St. were you located?

A. Well, I lived in two or three places on 20th St., but originally I lived between M and N Sts.

Q. Where were you living in 1840?

A. Well, it was on that block.

Q. In what business were you engaged in there?

168 A. Manufacturing glue and neat's-foot oil.

Q. Did your business call you to go in the vicinity of Meridian hill?

A. No, sir; it called me to go to John Little's place.

Q. Where was that?

A. That was a place to the west of us.

Q. Did you have opportunity at the time spoken of to become acquainted with a square in this city between 17th and 18th and T and U Sts.?

A. No, sir; only from hearsay.

Q. Did you have opportunity of becoming familiar with that square?

A. I had. I passed it twice a day for about 10 years.

Q. Was this square under cultivation or not at that time?

A. It was cultivated in hay.

Q. Was it cultivated in any other way?

A. Well, a small amount of vegetables was raised on the corner, but very few of them.

Q. Was the square enclosed?

A. Yes, sir.

Q. What was the nature of the enclosure?

A. Well, an ordinary post-and-rail fence.

Q. All the square?

169 A. Pretty much all the square. I didn't notice the side, but the front part, on Boundary street, was a post-and-rail fence.

Q. Did you know in any way who was supposed to cultivate the square at that time?

A. I didn't; I only heard that.

Mr. HUNTON: Do not give hearsay.

The WITNESS: I have heard Little's overseer say that Mr. Abbott was getting in his crop, and all that sort of thing, from year to year.

Mr. HUNTON: I object to the answer because it is based on hearsay.

Mr. RALSTON: Do you know who was generally supposed to own and cultivate the square we are speaking of?

A. Mr. Abbott.

Mr. HUNTON: I object to the question and answer because based upon supposition.

The WITNESS: It was considered Abbott's place always.

Mr. RALSTON: By what name, if any, was the place known?

A. Abbott's place.

Q. You are speaking now of the time referred to, 1840, and
170 from that down, as I understand you?

A. Yes, sir.

Q. How long were you familiar with this place?

A. Well, for 10 years at least.

Q. Was the place cultivated by anybody other than Mr. Abbott, to your knowledge?

A. I never heard of it being cultivated by anybody else but Mr. Abbott.

Q. Was it or not continuously cultivated by some one during that period?

A. Yes, sir.

Q. During the period you have spoken of, 10 years, was the square enclosed or not, Mr. Quinter?

A. It was enclosed.

Q. Were the enclosures sustained and kept up from time to time?

A. Yes, sir.

Q. Were the enclosures such as to turn stock?

A. Yes; ordinarily turn stock.

Cross-examination.

By Mr. HUNTON:

Q. How far did you live from this square?

A. I lived part of the time—say 4 or 5 years—down on
171 20th street; I suppose a half a mile from it, but my business was on Little's place. I went there in the morning or night and passed Abbott's place.

Q. What was the number of the square?

A. I suppose 150. I think it was between 17th and 18th streets, to the best of my knowledge.

Q. What makes you know it was between 17th and 18th streets?

A. I located it there.

Q. How did you locate it?

A. From the appearance of the land around there.

Q. Were the streets laid out in that part of the city in 1840?

A. No, sir.

Q. Then how do you know that this square was between 17th and 18th streets?

A. I have come to that conclusion since.

Q. Along about the time you speak of—1840—how did you know what streets this square was between?

A. 16th St. was open, and I judged from that.

Q. Then you speak by estimation?

A. Yes, sir; I lived on Meridian hill for 8 years.

172 Q. Do you know from your own knowledge that Mr. Abbott had possession of this square?

A. No, sir; only hearsay.

Q. And you say that it was enclosed by a post-and-rail fence?

A. Yes, sir.

Q. Was there any other kind of enclosure around that square except this post-and-rail fence?

A. Not of my knowledge. I don't remember. All the squares were more or less enclosed there.

Redirect examination.

By Mr. RALSTON:

Q. Did you ever notice any hedge enclosure about any part of the square?

A. No, sir; no hedge fencing on the main street that I know of.

By Mr. HILLYER:

Q. I believe you stated that you did not know of Mr. Abbott occupying and cultivating this place except by hearsay?

A. That is Mr. Abbott's place, and he got a nice hay crop off it from year to year.

173 Q. Then you did know by your personal observation that some one was occupying and cultivating this place during the period you have referred to?

A. Yes, sir; I saw them taking in crops.

Q. And it is only from hearsay that you knew this square to be occupied and cultivated by Mr. Abbott?

A. Only from hearsay. I heard persons say there that Mr. Abbott was getting in his crop. I didn't know Mr. Abbott personally.

Q. Did you know, during that period, of any one else besides Mr. Abbott claiming to own the ground?

A. Never did.

Mr. HUNTON: Did you ever hear of Mr. Abbott claiming to own the ground?

A. No, sir; I only knew by hearsay that it was Mr. Abbott's place.

Mr. HILLYER: You spoke of Little's place. Where is Little's place?

A. Little's place is on the county road just opposite Woodley park.

Q. It is immediately north of the Woodley Lane road, is it not?

A. Part is and part ain't. It is divided by the county road.

174 Q. What road do you take to go to Little's place from the city.

A. Columbia road.

Q. Do you call the continuation of 19th street, the road running out from 19th street, Columbia road?

A. 20th street would be more correct.

Q. In going from your place to Little's place did you have to pass this square between 17th and 18th and T and U streets?

A. Yes, sir; it was on my way.

Q. Where did you live during this time?

A. A portion of the time on 29th street and a portion of the time on Meridian hill.

Q. During the time you lived on Meridian hill in going from your place to Little's place did you pass the square I have referred to?

A. Not from Little's place.

Mr. GARNETT:

Q. When you lived on 20th street did you pass by this square on the way to Meridian hill?

A. Yes, sir.

Q. Where was this square?

A. Between 17th and 18th streets.

175 Q. Then how could you pass this square going by the road?

A. I didn't go by the road.

Q. Where did you go?

A. I went around Boundary and went through the slashes.

Q. Is his place on Boundary street?

A. Yes, sir.

Q. How far from where you lived was this place?

A. A half a mile.

Q. From where you lived on 20th St.?

A. Yes. sir.

Q. Now, what was the size of the place enclosed there? What was the size of the place this enclosure surrounded?

A. I should judge about one square.

Q. Were the squares laid out?

A. People had their lots laid off and enclosed in.

Q. Were the streets laid out at that time?

A. Laid out, but not opened.

Q. From your eye could you tell where the street was?

A. I could locate the place from my observation around there as being between 17th and 18th streets.

Q. Could you have gone out there in 1840 and picked out

176 a square or lot without the assistance of a surveyor?

A. Not a lot, I could not; but a square I could.

Q. Did you ever go and examine this square?

A. No, sir; not by any means.

By Mr. HUNTON:

Q. You say that the Boundary is on the north of this place. Now, what bounds it on the other side?

A. Gen'l Little's place.

Q. You say that this square which you are speaking of runs up to Boundary. Now, what street is on the other side of this square, opposite Boundary?

A. General Little's estate.

Q. No street?

A. No, sir; it is in the county.

By Mr. HILLYER:

Q. Was the Little place this side of Boundary?

A. North of Boundary.

Q. Have you, within the last few years, seen the square between 17th and 18th and T and U streets—say, within the last 8 or 10 years?

A. I cannot say that I have paid any attention to it or
177 had any curiosity at all to notice anything about it, but I am familiar with all along Boundary street for the last 15 or 20 years and more than that.

JOS. R. QUINTER, SR.

Subscribed and sworn to before me —

L. CABELL WILLIAMSON,
Examiner in Chancery.

178 *Testimony of George S. Fairfax.*

GEORGE S. FAIRFAX, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.

A. George S. Fairfax; my age was 53 last June; my occupation is keeping a wood and coal yard; my residence is 1121 19th street and my business place is at 515 21st street N. W., Washington, D. C.

Q. Do you know a piece of ground between 17th and 18th and T and U street, up near Boundary street?

A. Yes, sir.

Q. Did you ever do any work upon that square or in connection with it?

A. Yes, sir; I worked on that lot something over a year for Mr. Abbott.

Q. What year was that?

A. I could not tell the year. I did not take account of it. I came here when I was 18 years old, from Virginia, and the first man I worked for was Fred. Butler, in a livery stable, but I soon
179 quit him and went to work for Mr. Abbott.

Q. Then it was when you were about 18 years old, was it?

A. Yes, sir.

Q. In what condition was the square at that time?

A. It was fenced in, as well as I recollect, with about three panels of boards and a post, so as to keep his cattle in, and he planted hay and potatoes, and I think on the T-street side was a hedge or thorn fence.

Q. Was any of this rail fencing along where the hedge was?

A. Not where the hedge was thick there was not any.

Q. Where the hedge was thin, he had a board fence, did he?

A. Yes, sir; and in that lot was an old apple orchard. I remember that because of the trouble we had to keep the boys out.

Q. When you worked for Mr. Abbott was this place enclosed substantially?

A. Yes, sir.

Q. So as to keep out stock?

180 A. Yes, sir. I used to turn the cattle out in the morning and go after them in the evening.

Q. You were doing this work for Mr. Abbott, were you?

A. Yes, sir.

Q. Do you know whether or not Mr. Abbott claimed to own this ground at that time?

A. Yes, sir; and he offered to sell me a lot off it.

Q. Do you remember anybody else claiming to own that ground besides Mr. Abbott?

A. No, sir.

Cross-examination.

By Mr. GARNETT:

Q. How old are you?

A. About 53.

Q. Was it before or after the war that you came here to Washington?

A. A good while before the war.

Q. How long before?

A. I disremember; but about 10 years before the war.

Q. You say that one of the first men you went to work for in this place was Mr. Abbott?

181 A. Mr. Fred. Butler. I stayed with him about a couple of weeks and then went to work for Mr. Abbott.

Q. When you went to work for Mr. Abbott was there any house on this lot?

A. Yes, sir; a house sat right in T street—an old, shabby frame house.

Q. Who were the parties that lived in it?

A. I don't know; but I know they didn't stay there long, because I heard Mr. Abbott say that they didn't pay him his rent and he was going to put them out.

Q. How high was this hedge on T street that you have spoken of?

A. I think 5 feet.

Q. You said something about cattle. Did he keep cattle in there?

A. Yes, sir; I used to drive them backwards and forwards.

Q. I thought you said he raised hay and potatoes in there. Did he keep the cattle in there then?

A. After we mowed the hay we would turn the cattle in. Until the hay was cut the cattle was kept off in some other lots.

182 Q. He used to raise hay and put the cattle in there after it was cut—that is your statement now?

A. Yes, sir.

Q. What do you mean by saying that you worked in this lot?

A. I turned the hay and shocked it, and I planted potatoes and ploughed the ground, and things like that. He kept a potato patch in one portion of the lot.

Q. Was that fenced off from the other part?

A. No, sir; it was all the same.

Q. Then you turned the cattle in and let them run in the potato patch?

A. No, sir.

Q. How long did you work there?

A. I worked there something over a year—I think a year and five or six months.

Q. Where did Mr. Abbott live at that time?

A. He lived on 14th and E streets—right down here on the corner, in a frame house. He owned all those frames at that time.

Q. Did you say he wanted to sell you a lot?

183 A. Yes, sir; for a cent and a half a foot, and he take it out in work, he told me.

Q. While you were there was this fence all around the place?

A. Yes, sir; this fence was all around it.

Q. Do you know how much ground was within this enclosure?

A. I do not. I suppose there was a square, by the looks of it. It was a good big lot, and one portion struck Boundary street.

Q. What portion struck Boundary?

A. The northwest side, next to Little's slaughter-house there.

Q. Do you mean to say that Little's slaughter-house was across Boundary from his place?

A. Right across, a little to the left. He owned a farm there and had a slaughter-house.

Q. Where do you work now?

A. I am on 21st street now, between E and F.

Q. You say you worked at this place about a year. Did you then leave it?

A. Yes, sir.

184 Q. Have you ever been back there to work since?

A. No, sir.

Q. Have you ever had your attention called to the place in any way since that time?

A. No, sir.

Q. When was the first time that your attention was called to this place since that time?

A. Mr. Abbott's place?
Q. Yes.
A. I had a summons this afternoon.
Q. Did anybody say anything to you before you were summoned?
A. Somebody asked me if I ever worked for Mr. Abbott.

Mr. HILLYER:

Q. Was it this gentleman (pointing to Mr. Ralston)?
A. Yes, sir.

Mr. GARNETT:

Q. How long ago was that?
A. I suppose some five weeks.
Q. Then that was the first occasion which you had reason for having your attention called to Abbott's place since you left there?
A. Yes, sir.

G. S. FAIRFAX.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

185 *Testimony of Albert Dobson.*

ALBERT DOBSON, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.
A. Albert Dobson. I live in Clark's alley, between Connecticut Ave. and 18th St. My age will be the 16th of next December 70 years if I should live.
Q. Mr. Dobson, do you know a piece of ground lying in the northwestern portion of the city, between 17th and 18th and T and U streets, running up to Boundary on the end?
A. I do, sir.
Q. How long have you known that ground?
A. I suppose I have known that spot of ground—well, I worked upon it two years and eight months, or something like that, on the two grounds—one on 14th and one on that ground you speak of.
Q. We are confining ourselves to this ground I have referred to. When did you work upon it?
A. I could not actually bring my mind to say. Those
186 times we didn't know anything except what our bosses told us.
Q. For whom did you work?
A. Mr. Abbott.
Q. Can you tell by your age how many years ago it was that you did this work for him?
A. I couldn't tell.
Q. When were you married, Mr. Dobson?

A. Now, mind you, I can't tell you that.

Q. Come as near as you can to it.

A. I can't come at it, because I won't tell it unless I state the truth about it.

Q. Come as near to it as you can.

A. I have been married over 32 years.

Q. Was it before or after you got married that you worked for Mr. Abbott?

A. I worked for him before I was married.

Q. And you have been married 32 years?

A. Yes, sir.

Q. How long before you were married did you do this work, as near as you can tell?

A. Over a year; and I worked a year after I was married.

Q. Then, you married while you were working for Mr. Abbott?

187 A. Yes, sir; while I was working for Mr. Abbott.

Q. State what the condition of that square was at that time.

A. Well, the condition of that ground was very scrubby on my first getting acquainted with it to work on it. I know I had to grub it. The boys cut holes in the hedge, and I had to take posts and boards and go there and put that fence up, in order to keep the cattle out. When we raised the crops we didn't keep the cattle in, but kept them out on the 14th-street side.

Q. Did you raise crops there these two years you speak of?

A. Oh, yes; splendid crops.

Q. What kind?

A. Hay, turnips, beets, onions, hay, and everything.

Q. For whom were you doing this work?

A. Mr. Abbott.

Q. Do you know whether Mr. Abbott claimed to own the ground at that time?

A. He claimed to own it.

Q. Was this a substantial enclosure—did it keep out stock?

188 A. Not until we went to work and fixed it up.

Q. What kind of an enclosure was it?

A. It was enclosed principally with a hedge, but some parts were rotting down.

Q. Was it all enclosed by a hedge?

A. Here and there the boys pulled a plank out.

Q. While you were there was there a fence around this place for the purpose of keeping out stock?

A. Yes, sir; I put it up myself. It was a substantial fence of rails and posts.

Q. Had there been a fence around it before that?

A. There had been a kind of little, small, temporary rail—three rails and low posts—and I dug them out and threw ditches up after I put my fence up, to keep the water from flowing over the place. I was working there for weeks and weeks throwing up a ditch around it.

Q. Then what you did was in the way of repairing this fencing?
A. Yes, sir; to keep stock out and keep stock in if we choosed to put it in.
189 Q. In what part of the year did you put stock in?
A. Any time when we were not raising turnips or cabbages. After the crop was made we turned the cattle in, and what loose turnips and things like that there was that we did not want to gather we let the cattle eat.
Q. Did you at that time ever hear of any one else except Mr. Abbott claiming to own that ground?
A. No, sir.

Cross-examination.

By Mr. HUNTON:

Q. Where did you live at the time you worked on this lot?
A. I lived on 15th street.
Q. How far from the lot?
A. I lived a distance from the lot. I lived in the city; right up here where the statue is.
Q. How far from the lot?
A. At least two miles. I lived here in the city and the lot was out on the boundary—opposite John Little's place.
190 Q. How did you know this lot spoken of was between 17th and 18th and T and U streets?
A. Because they always called it 16th street, although it was not laid off; that was the name of the street, but you couldn't get up there with a cord of wood on a two-horse cart if the road was bad.
Q. Did that street run by this lot?
A. No, sir; you would have to go to the boundary and turn to the left.
Q. How do you know that 17th street ran by this lot?
A. It came right at the lot, but 16th street was always named 16th.
Q. But you do not know whether 17th street was one of the boundaries of this lot, do you?
A. I do now, but didn't then.
Q. When did you leave there?
A. I left Mr. Abbott's after being there 2 years and 6 months, if not more.
Q. Where did you go after leaving Mr. Abbott?
A. I went to hacking for Mr. Cowling.
Q. How often did you go out that way after leaving Mr. Abbott?
A. I used to drive by there often. While Mr. Cowling engaged me to take parties out hacking and the roads were good in
191 dry weather I generally drove past there. In muddy weather I did not take those roads out there; that was a marsh out there where they carried dead horses and cows, and they used to call it horse heaven. Outside of our lot wasn't enclosed.
Q. Could you tell, then, whether any street ran out there except 16th street?

A. Couldn't at that time.

Q. Could you tell where you went when you were moving about out there?

A. No, sir; you couldn't tell.

Q. Or where the streets ran?

A. No, sir. I came here to tell the truth.

Q. I do not doubt that, but I want to get at what you know about this location.

A. I used to cut through the swamp when it was dry enough and go through them swamps, and then the brush was so thick and the bushes so high that it almost swept me off the cart when I was driving.

Q. Do you know anything about the claim to the ownership of that lot except while you worked there? You inferred that

192 Mr. Abbott owned it.

A. I didn't know anybody but Mr. Abbott to claim it.

Q. Did you know anything about him as claiming to be the owner of that place after you left there?

A. No more than I thought it fell to his son after his death.

Q. I ask as to your knowledge of it.

A. I don't know.

Q. So that all you know about the ownership or claim of ownership of this lot by Mr. Abbott was during the 2 years and 6 months that you worked there?

A. Yes, sir.

Q. And that, you think, was 32 years ago?

A. I think so; I think so. I may be mistaken, but I think so. My mind says that way.

his
ALBERT x DOBSON.
mark.

Witness:
W. H. WETZEL.

Subscribed and sworn to before me this 27th day of November, 1885.

L. CABELL WILLIAMSON,
Examiner in Chancery.

193 *Testimony of Nicholas Callan.*

NICHOLAS CALLAN, a witness on behalf of the plaintiff, being duly sworn, testified as follows:

By Mr. RALSTON:

Q. Please state your name, age, residence, and occupation.

A. Nicholas Callan; I am a notary public, which is the only office I hold now. I live at No. 1422 F street, Washington, D. C., and have lived there for the last 78 years.

Q. Were you acquainted with Joseph Abbott, a former citizen of Washington, D. C.?

A. Yes, sir; for many years.

Q. What was his occupation?

A. When I first knew him he was a coachman for John Quincy Adams, Secretary of State, and afterwards President of the United States.

Q. State what was his occupation in about 1840.

A. He was a keeper of hacks and a dairy. He had cows and sold milk.

Q. Were you acquainted with Mr. Abbott's business affairs to any degree?

A. He often spoke to me about his business. He used
194 to purchase property here and acknowledge deeds before me. I used to prepare deeds of conveyance for him.

Q. Do you know of his having purchased a square *a* ground in this city between 17th and 18th and T and U streets?

A. Yes, sir. I was with him when *we* bought it at a tax sale. It had belonged to General Tucker, the first Treasurer of the United States.

Q. What did he do with this square? Did he cultivate it in any way?

A. After he got a tax title to the property he enclosed it and cultivated it—that is, he raised oats and straw for his horses and cattle.

Q. Were you acquainted with the purchase by Mr. Abbott of a piece of ground in Washington? Near the corner of lot 1, in square 226, I think it is.

A. I know he purchased a lot there and improved it and lived there.

Q. How long after his purchase of that lot was it that he commenced cultivating the square that we have been speaking of?

A. All I know *it* that I used to see him hauling in produce while he occupied this house.

195 Q. How long was it after he purchased this lot at the corner of E and 14th streets that he commenced cultivating the square of ground that I have referred to?

A. I cannot tell the ground. All I know was that while he occupied that house, and when he kept cows and sold milk, I have seen him driving in from his lot in the northern part of the city with cart-loads of country produce.

Q. Did you have occasion to go over Washington about the year 1840?

A. I have known Washington by heart all my lifetime nearly.

Q. Do you know about what time Mr. Abbott commenced to cultivate the square in question?

A. In 1841 he was cultivating it. I am pretty well satisfied of that, because General Tyler appointed me justice of the peace at that time. I used to take acknowledgments of deeds, and took Mr. Abbott's acknowledgment in that house.

Q. And it was at that time, as I understand you, that he
196 was bringing in hay and produce to the city from the square out there in the northern part of the city?

A. Yes, sir.

Cross-examination.

By Mr. HUNTON:

Q. About where was the hay when you saw it, Mr. Callan?
A. In the cart.
Q. In what part of the city?
A. Coming down 14th street.
Q. Can you tell where that hay came from?
A. I understood—I heard——
Q. That is what I am trying to get at. You do not know of your own knowledge from where it came?
A. No, sir.
Q. Can you tell from your own knowledge that he brought in anything from that lot?
A. Not of my own knowledge—that is to say, I was not there to see him cut the hay and put it into the cart.
Q. Did you ever see him in possession of this lot?
A. No, sir.
Q. Then all you know about his possession of this lot is hearsay?
197 A. Yes, sir; I heard Mr. Abbott say it was his property.
Q. That, of course, is hearsay. You know nothing about his possession of this lot except hearsay?
A. No, sir.
Q. And as far as your knowledge goes you know nothing about his possession of this property?
A. No.
Q. You speak of his getting a tax title. How do you know that?
A. From himself.
Q. Then you do not know it of your own knowledge?
A. No, sir.
Q. You only know that from hearsay?
A. Yes, sir; he offered the property to me for sale. Before he bought it it belonged to Gen'l Tucker.
Q. Now, sir, how do you fix the date at which he got this tax title?

Mr. RALSTON: He did not fix the date when he got the tax title.

Mr. HUNTON: Do you know about when he got this tax title?
A. Previous to 1841.
198 Q. But you do not know of his occupation, of your own knowledge?
A. Well, my recollection is imperfect, but I recollect there was a very common old board fence there at the time he bought it.
Q. You do not know who put that fence there, do you?
A. No, sir.
Q. And you do not know, of your own knowledge, who occupied this place at that time?
A. Only from what I heard.
Q. What kind of fence was around this lot?

A. It was composed of old boards, like what you would see taken from a mutilated house.

Q. When was that?

A. That was previous to 1841.

Q. How long previous?

A. Perhaps a year or two. I do not know how long.

Q. Nor did you see this lot after 1840?

A. I don't recollect to have seen it since 1841.

Q. Well, when you saw it in 1841, it was enclosed with an indifferent board fence?

A. Yes, sir.

199 Redirect examination.

By Mr. RALSTON:

Q. Mr. Callan, do you know who put that board fence up?

A. Not personally. I know the fence was there. Everybody understood the same as I did, that that was Abbott's lot.

Q. Was that the general opinion, that it was Abbott's lot, at the time spoken of?

A. I never heard it disputed. It was referred to as Abbott's lot, bought from General Tucker.

Q. In what way was it that you knew of this hay you have spoken of being raised on this lot?

A. It came from that direction and Mr. Abbott told me.

Mr. HUNTON: Do not state what Mr. Abbott told you.

Mr. RALSTON: Answer the question and Mr. Hunton can put in his objection.

Mr. HUNTON: I except to so much of the last answer of the witness as states what he heard from Mr. Abbott.

Mr. RALSTON: Mr. Callan, at the time you speak of, 1840 and 1841, did Mr. Abbott own any other property in that direction?

200 A. Not that I ever heard of. Of course he owned property down here in this part of the city, on F street.

Q. At the time you speak of, when you saw this square in 1840 and 1841, was it under cultivation?

A. Of course. There was some grain growing there. I did not examine it critically; maybe corn and cabbage or something of that kind.

Mr. HUNTON: You stated a while ago in answer to a question by Mr. Ralston that at the time you speak of, 1840–'1, Mr. Abbott owned no other property in that part of the city.

A. Not to my knowledge.

Q. How do you know he did not?

A. I don't know at all.

Q. And all you mean to say is that you know of his owning no other property out there?

A. No, sir; I do not.

Q. He may have owned other property out there and you not have heard of it, might he not?

A. Yes; but I think if he had I would have heard of it.

Mr. RALSTON:

201 Q. Were your relations with Mr. Abbott such that you would have been likely to have known it had he owned other property out there?

A. Yes, sir; because we were very friendly. I used to be a sort of politician in those days, running for the common council, and he used to vote for me. I was always elected, too.

N. CALLAN.

Subscribed and sworn to before me this 27th day of November, 1885.

L. CABELL WILLIAMSON,
Examiner in Chancery.

At this point the further taking *to* these depositions was adjourned until December 4th, 1885, at 2 o'clock p. m.

L. CABELL WILLIAMSON,
Examiner in Chancery.

DECEMBER 4TH, 1885—2 o'clock p. m.

Met pursuant to adjournment and adjourned subject to agreement between counsel as to day of meeting.

L. CABELL WILLIAMSON,
Examiner in Chancery.

202 WASHINGTON, D. C., *January 6th*, 1886—2 o'clock p. m.

Met pursuant to agreement of counsel.

Testimony of Chas. A. Arundell.

CHARLES A. ARUNDELL, a witness on behalf of the complainant, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, present occupation and place of residence.

A. I am nothing but a laborer. My age is about 64 or 65. I was born in 1820, in July.

Q. Where do you now reside?

A. Near Howard University.

Q. How long have you lived in the city of Washington?

A. I have lived in the city of Washington about 55 years. I was born just over the river, in Virginia, and came here when a small boy.

Q. Where did you live in 1840?

A. I lived on the Tennallytown road, at a place called Pole Hill. An Englishman by the name of Cammack raised me.

Q. Then, in 1840, you were about 20 years of age, having been born in 1820?

A. Yes, sir.

203 Q. Did you, in 1840, know of a square of ground situated in the northwestern part of the city, near Boundary street, bounded by 17th and 18th streets and T and U streets?

A. Yes, sir.

Q. At that time who was occupying that ground, if any one?

A. Mr. Joseph Abbott.

Q. Did you know Joseph Abbott personally at that time?

A. Yes, sir; he was an Englishman, and I was working for an Englishman.

Q. State what was the character of his occupation.

A. He was keeping a kind of livery stable and cow or milk dairy or something like that.

Q. What did he do with reference to this tract of ground?

A. He grew it in grass, hauled out manure, and kept it in timothy and grass, and cut it with his own men.

Q. Did you see him raise any vegetables about that time?

A. I cannot say, but I know there were apple trees on the ground.

204 Q. Do you know whether in 1840 this ground was enclosed?

A. Some parts of it had a thorn hedge on it, and a part was enclosed with what we called a post-and-rail fence.

Q. Was it so enclosed as to keep out stock?

A. Yes, sir.

Q. Was the enclosure sufficient to protect these crops of hay, &c., from the stock?

A. Yes, sir.

Q. Now, for how long after that did your acquaintance with this square continue?

A. Well, sir, for years; I should say 8 or 9 or 10 years.

Q. Who occupied the square during those 8 or 9 or 10 years?

A. Mr. Abbott had it all the time.

Q. Do you know whether he claimed to be the owned of it?

A. I cannot say.

Q. How was the place spoken of during that time?

Mr. GARNETT: I object to the question.

A. It was nothing but a slashes.

Mr. HILLYER: But how was this square spoken of or referred to?

A. It had no name as I know of. When I used to pass there he used to say, "Keep out of this ground, boys; it is mine."

205 Q. That was Mr. Abbott who so spoke, was it?

A. Yes, sir.

Q. Did you know of anybody claiming that ground other than Mr. Abbott during that time?

A. Not until Mr. Willard got it. He was the first to occupy any house on it. I afterwards went to laboring work and worked about with the bricklayers and plasterers there, and that is the reason I know about it.

Q. When were you married?

A. I got married July the 8th.

Q. Of what year?

A. It was the 8th. I forget now, but I have it here on a piece of paper. I know I got married 4 days after I was 21. Here it is here (handing memorandum to counsel).

Q. Look at the memorandum and state it yourself.

A. I cannot read. You read it.

Q. Well, was it 1840?

A. 1840.

Q. Do you remember any circumstance which occurred about the time you got married? Who was President at that time?

206 A. Gen'l Harrison.

Q. How long had he been President when you got married?

A. Three or four months.

Q. At the time you married do you know the fact that Mr. Abbott was occupying and cultivating this place?

A. Yes, sir; I passed it every day.

Cross-examination.

By Mr. GARNETT:

Q. You say that Mr. Abbott told you to "keep out of this ground, boys; it is mine"?

A. Yes, sir.

Q. What were you doing when he said this to you?

A. I was hunting and walking through there.

Q. I thought you said he was cultivating this place at that time?

A. Yes, sir; but there were three or four men of us hunting around there.

Q. Did you get over the fence or hedge when you went upon his place?

A. There were places where the cows had poked their heads in, and we cut through there.

207 Q. So you got through the hedge where the cows had made openings and got on the grass where he had cows grazing. Now, you were not hunting in there, were you?

A. No, sir.

Q. Then, why did you go through there?

A. We were cutting a nigh road.

Q. Do you say this was only one square which was occupied by Mr. Abbott?

A. It was about—let me see—about 4 or 5 acres of ground. He had the street and all in.

Q. He enclosed some of the street, did he?

A. Yes, sir.

Q. He had a street inside of the enclosure, did he?

A. Yes, sir. The hedge was on top of the bank.

Q. Did he have both streets in that enclosure?

A. He had the whole square.

Q. You say he had about 4 or 5 acres of ground there, including streets and all?

A. Yes, sir.

Q. You cannot read or write, can you?
A. No, sir.
208 Q. Who made that memorandum of the date of your marriage?
A. My daughter. It is in the family Bible.
Q. You did not write it in the Bible, did you?
A. Her friends did.
Q. Whose friends?
A. Her friends and my wife's friends.
Q. Where do you live now?
A. Out by the hospital, near Howard university.
Q. How long did you live in Tennallytown?
A. I was raised there; I lived there 16 or 17 years. A man out there by the name of Mr. Cammack raised me.
Q. In 1840 all that ground around Mr. Abbott's place was a sort of slashes, was it not?
A. Yes, sir.
Q. And you used to hunt around there?
A. Yes, sir; on Sundays and whenever there was a holiday.
Q. He did not live upon that place, did he?
A. No, sir; he did not. He lived here in the city.
Q. And he had a sort of cow-pasture out there?
209 A. Yes, sir.
Q. And you say there was nothing raised out there but grass?
A. That is all.
Q. Did he keep cows there in the winter?
A. No, sir.
Q. What did he do out there in the winter?
A. It lay idle.
Q. How high was this hedge in 1840?
A. I know it was raised there, and known as an English thorn hedge. Some called it a black-thorn hedge. It was from 10 to 15 feet high and slashes off at the top with a knife, and the stuff thrown at the bottom of the hedge to stop up any openings or holes.
Q. You say there were holes in it?
A. Yes, sir; it was a place where cows and hogs ran in.
Q. Cows and hogs ran in there, did they?
A. Yes, sir.
Q. Could they run out?
A. Yes, sir.
Q. They could go in and out, could they?
A. Yes, sir.
210 Q. How about this post-and-rail fence; was that all up and in good condition?
A. It was an open fence.
Q. Was it in good condition or were parts of it down?
A. No, sir; it was not at all in good condition. You could crawl through a hole and any birds that flew out we could get them.
Q. Were there any places for the cows to go in and out?

A. Yes, sir; sometimes they would get in there. But there was not a day he would not be out there. He would either go out on his horse or send out a man to keep the fence up.

his
CHARLES A. x ARUNDELL.
mark

Subscribed and sworn to before me this 6th day of January, A. D. 1886.

L. CABELL WILLIAMSON,
Examiner in Chancery.

211 *Testimony of G. Fastnaught.*

GEORGE FASTNAUGHT, a witness on behalf of the complainant, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.

A. George Fastnaught; I follow brick and stone paving, both in mortar and in sand; I live on Pomeroy street at present, near Howard University; I was born in 1825; I was 60 years of age the 18th of December past.

Q. Where did you live in the year 1840?

A. In 1840 I lived on 7th and O streets.

Q. Then about that time you were about 15 years of age?

A. Yes, sir.

Q. Did you at that time know a square of ground in the northwestern part of the city which is now called square 151—the square between 17th and 18th and T and U streets?

A. Yes, sir; I know a square there. I don't know the number of the square, but it belonged to a man by the name of Joe Abbott. I have known that square since 1856 or 1858.

212 Q. What time did you say you first became acquainted with it?

A. I have been acquainted with the square since 1836 or 1838.

Q. Well, were you acquainted with it in 1840?

A. Yes, sir.

Q. Did you know at that time whether that square was occupied by any one?

A. Yes; it was occupied by Joe Abbott.

Q. Did you know Mr. Abbott personally?

A. I did, sir; for years.

Q. Have you been to that square recently—I mean in the last few days?

A. I used to pass there maybe once a month or maybe oftener than that.

Q. What was Mr. Abbott doing towards occupying this square, as you remember?

A. He cultivated it. I saw truck stuff growing there, but whether it was for the market or for his own use I don't know; but it was principally in grass, and towards latter years he had it entirely for

grass. I saw cabbage and potatoes grow there, but maybe they were only for his own use. However, I saw it in truck stuff,
213 and in latter years it was principally in grass.

Q. What did Mr. Abbott do about that place?

A. I saw Mr. Abbott there from time to time directing the men as to what he wanted done.

Q. At that time was the square enclosed?

A. Yes, sir.

Q. Please state the character of the enclosure.

A. It was a thorn hedge that ran around it partly and partly a fence. Some parts where the hedge had decayed and been cut out a rail was stuck in to keep stock out. A portion of it where there had originally been a rail-and-post fence and where the hedge did not come up satisfactorily it was kept in repair; but where the hedge grew very thick they let the fence rot away. I know there was an orchard on the place; there were apple trees on it.

Q. For how long after the year 1840 did you have occasion to see this square?

A. I was there yearly, perhaps monthly, until 1846. I left in 1846.

Q. Say, for those six years, who occupied the place?

214 A. Mr. Abbott. I returned in 1847, and Mr. Abbott owned it, to my recollection, until 1849. I married in 1849, and I know I passed it from time to time. I married in the immediate neighborhood, and I saw the square monthly and weekly.

Q. Was the cultivation you speak of kept up during those years?

A. Yes, sir; but afterwards the fence got dilapidated. You know there were slashes all around there.

Q. Was the enclosure during this period you have spoken of kept up so as to protect the crops?

A. Yes, sir; so far as I know until the last 20 years past.

Q. You say you knew Mr. Abbott personally. Do you know whether he claimed to be the owner of that square during this time?

A. It was so said that it was Joe Abbott's place, and I never knew better.

Q. You say it was called Joe Abbott's place?

A. Yes, sir; Joe Abbott's place, and I never heard anything else until here lately.

Cross-examination.

By Mr. GARNETT:

215 Q. Did Mr. Abbott ever tell you he owned that place?

A. No, sir; I never asked him.

Q. And you never heard him say so?

A. I never had any conversation with him, and I never knew better than it was Mr. Abbott's place.

Q. My question is whether Mr. Abbott told you he owned that place.

A. No, sir; he never told me it was his place.

Q. Now, in 1840 you say the hedge was there and occasionally there were places where there would be an opening in the hedge and a board was stuck in to keep cattle out, and then at other places there was a post-and-rail fence. Is that correct?

A. Some parts where the hedges were thin a rail or plank or something would be nailed or stuck in to keep the cattle from getting in.

Q. You mean, then, that there were places in 1840 where this hedge had become dilapidated. Then it was an old hedge, was it not?

A. I wouldn't positively say whether it was an old or a new hedge, not all the way around.

216 Q. I am speaking of the hedge there. It was not a well-grown hedge, was it?

A. Parts of it was and parts of it not. There were some parts where I could crawl underneath, because I used to crawl through to get apples. There was through there what you call a dog path.

Q. What I understood you to say was that part of the hedge was broken and low, and they had to put boards in there to keep cattle out. Is that correct?

A. Yes; either boards or rails or anything they could get. Sometimes the top of the hedge was cut down and the cuttings stuck in underneath to keep stock from going through.

Q. Now, this is 1840 that you are speaking about, is it not?

A. It might have been sooner or a year or two later.

Q. But it was about 1840, was it not?

A. Yes, sir.

Q. You say you remained around there until 1846 and then went away for awhile?

A. I went to Mexico in 1846; yes, sir.

Q. When was it that you returned to that place?

A. 1847.

217 Q. Now, what was the condition of that hedge and fence in 1847 as compared with what it was in 1840? Was it any more broken down or have an older or more dilapidated appearance?

A. In 1848 or 1849 it was in good repair.

Q. You were married when?

A. 1849.

Q. Now, what called your attention to that hedge in 1849?

A. I was passing there daily and weekly.

Q. Where did you live?

A. I was then bound to Douglas, the gardener, on Connecticut avenue and Boundary, and my business in 1844 was there regularly.

Q. How about 1849?

A. In 1849 I married, and was then living on K street between 15th and 16th.

Q. Did you have any business out there?

A. There was a family by the name of Tenally, and we were deal-

ing in horses, and my business was every day with Mr. Tenally, going to market.

Q. How long were you engaged with him in business?

218 A. We were engaged together off and on 5 or 6 or 7 years.

Q. When did you commence with him?

A. About 1847.

Q. Then you were together about 5 or 6 years. After that did you have any business out in that locality?

A. I built in 1852 a slaughter-house for John Little right in the immediate neighborhood, right this side of it.

Q. How long did it take to build that slaughter-house?

A. About 6 months.

Q. After you finished the slaughter-house did you have any business out in that neighborhood?

A. Nothing particular.

Q. Then you had no particular reason to look at this enclosure, did you?

A. No, sir; no occasion; but I saw it daily. Of course I didn't know I would be called to account for it afterwards.

Q. You didn't see it daily after 1852, did you?

A. Oh, no.

Q. You didn't know the condition of this place after 1852, did you?

A. The last time I noticed it it was pretty well dilapidated—after the year 1861 or about 1861.

219 Q. It was pretty well down then, was it?

A. Yes, sir; in 1861 and 1862. The soldiers broke up everything around there then.

Q. Now, you say this square was enclosed. It was all slashes in that neighborhood in 1840, was it not?

A. Yes, sir; and mirey.

Q. And bushes had grown up all over it?

A. Yes, sir.

Q. And the streets had not been laid out?

A. I didn't know where the streets were.

Q. You couldn't tell where the streets were in 1840, could you?

A. I didn't know any of the streets. We didn't know any of the streets to be open.

Q. And there was nothing to indicate to a person passing along there where the streets were, was there?

A. I couldn't tell whether they had enclosed the street or not.

Q. That is what I was going to ask you. I was going to ask you if you could tell whether a street had been enclosed in this place or not.

A. No, sir.

Q. You didn't know what the extent of that enclosure was, did you?

A. No, sir.

220 Redirect examination.

By Mr. HILLYER:

Q. You have seen that same square recently, have you not?
A. Yes, sir; a week ago.
Q. Then do you know what streets it is between?
A. It is between T and U and 17th and 18th streets.
Q. So you can locate it now?
A. Oh, I could now. Two or three years ago you could tell where the old fence was; you could tell until Mr. Willard built there and put the sidewalk down.
Mr. GARNETT: Could you tell when you went there a week ago what the exact boundaries of that Abbott square was?
A. No, sir; because it had been graded and improved since.

GEO. FASTNAUGHT.

Subscribed and sworn to before me this 6th day of January, A. D. 1886.

L. CABELL WILLIAMSON,
Examiner in Chancery.

221 *Testimony of E. Barnes.*

EPHRIAM BARNES, a witness on behalf of the complainant, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, occupation, and present residence.
A. Ephriam Barnes; I believe I was born July 27th, 1825; my residence at this time is in Uniontown, sir; I think it is what they call the Good Hope road; I don't know any other name for it; I am a gardener by occupation.
Q. Where did you live in 1840?
A. On 14th street, sir; on Mr. Pierce's place.
Q. How old were you at that time?
A. I judge I was between 16 and 17, or somewheres along there. I don't know exactly. My business there was working the nursery and amongst the vegetables, flowers, &c.
Q. Do you know now where in this city is the square that lies between 17th and 18th and T and U streets?
A. I did know where the square was; I knew it lay between 17th and 18th, but what the other streets were I didn't know, and don't know to-day.
Q. Did you at that time know that square?
222 A. Yes, sir.
Q. Was any one occupying or using it at that time?
A. Mr. Abbott.
Q. What Mr. Abbott was that?
A. Mr. Joseph Abbott, I always understood his name to be, sir.
Q. Did you know him personally?

A. Yes, sir.

Q. Did you ever talk with him?

A. Not particularly, as I know of.

Q. Did you see him frequently?

A. I very often saw him go out there and come in.

Q. What did he do, to your knowledge, with reference to this square?

A. I used to see him go out there and scatter manure on it. He had part in grass, and I saw him go out there and stir the hay—what we call making hay—and stack it up until such times as he hauled it in.

Q. Do you know whether the place was enclosed?

A. It was.

Q. What was the character of the enclosure?

A. A thorn hedge running down on the south side of the
223 lot, and on the east there was a post-and-rail fence.

Q. Was the enclosure of such a character as to keep out the stock?

A. It was, sir; because Mr. Lewis Walker and Henry Walker had the whole of the slashes closed in to turn their cattle; they used to buy cattle in large lots, and Abbott had to keep the fence in good order to keep them out.

Q. Did Mr. Abbott, to your knowledge, raise anything on his place besides grass?

A. I have seen some vegetables, such as corn, and I don't know but what potatoes. I used to go around the place a good deal. I used to set rabbit traps around there in the fall of the year. I used to go to a Frenchman living there on the north side of the place. I never went inside, to my recollection.

Q. What kind of a square was this Frenchman's place; was it a square or a triangle?

A. I hardly know what to call it; it ran around like; he didn't have it all cleaned up.

Q. From 1840, say, how long did you know of Mr. Abbott occupying that place; how long did you have occasion to observe it?

224 A. I stayed at Mr. Pierce's about 10 years, and during that time Mr. Abbott still held claim on his place; I saw it several times after and it still went by the name of Abbott's place, and he still kept it enclosed for several years longer.

Q. How was his place spoken of in 1840, when you heard it referred to?

Mr. GARNETT: I object to the question.

A. I always heard it called Mr. Abbott's place.

Mr. HILLYER: Did you ever during those 10 years hear any one else claiming this place except Mr. Abbott?

Mr. GARNETT: I object to that question also.

A. No, sir.

Mr. HILLYER: Did you ever see any one but Mr. Abbott or some one under him engaged in cultivating this place or taking stock from it?

A. No, sir; I never saw any one during that time except those he had employed or himself.

Q. During those 10 years what do you say as to whether the enclosure was kept up or not?

A. Kept up.

225 Q. Kept up in such a way as to keep stock out?

A. Yes, sir.

Q. Are there any circumstances by which you can fix this date of 1840?

A. Well, I got acquainted with a young fellow who was Mr. Abbott's brother; he married his sister or half-sister; he was one of the family, anyhow; I used to run with him a good deal, and we used to go around that lot and on Sundays build a bonfire in the bushes.

Q. How did that help you to fix the date?

A. I know it was at the time of General Harrison's election that I got acquainted with him.

Q. At that time was this place occupied by Mr. Abbott?

A. It was, sir.

Cross-examination.

By Mr. GARNETT:

Q. You stated you were born when?

A. July 27th, 1825.

Q. How old do you say you were in 1840?

A. I never kept any run of that. I suppose 15 or 16, or somewheres along there, or 17.

226 Q. And that is as near as you can come to it?

A. I could come to it if I was to count it up.

Q. Now, you say nobody worked there except men employed by Mr. Abbott. Who did you know there?

A. I didn't know anybody.

Q. Then how could you know he employed them?

A. I saw him come out and talk to them.

Q. Did you not see men working there whom he did not come out and talk to?

A. Yes, sir.

Q. Now, how do you know who employed those men?

A. I supposed Mr. Abbott did.

Q. That is as near as you can come, what you suppose?

A. I couldn't come to the point-blank fact who employed them.

Q. Do you know who employed these men who were working around there from 1840 to 1850, whom Mr. Abbott did not come out and talk to?

A. No, sir. I should not pretend to say that they were all employed by him, but I imagine they were all employed by him, be-

cause he had it in his possession and he would go out there
227 to see about it.

Q. That is your imagination?

A. Yes, sir.

Q. You say you used to set rabbit traps around that place?

A. Yes, sir; around there.

Q. It was pretty wild out there, full of bushes and all that, was it not?

A. Yes, sir.

Q. No streets out there in 1840?

A. You could find them, because the stones were set.

Q. You could find the stones when you looked for them, could you?

A. Not particularly. I didn't look.

Q. Now, unless you looked for the stones you could not tell where the streets were, could you?

A. No, sir.

Q. How much ground was there in that enclosure which you say belonged to Mr. Abbott?

A. I haven't the least idea, sir.

Q. You lived around there, you say, for about 10 years?

A. Yes, sir.

Q. Then where did you go to live?

A. I went on the upper farm on Rock creek.

228 Q. You didn't see the place after that, did you?

A. Frequently. I very often came down to the lower farm after that.

Q. Did you know who had possession of it then?

A. Mr. Abbott.

Q. How do you know?

A. I saw him there.

Q. That is all you know about his possession, is it not?

A. Yes, sir.

Q. Now, how long did you stay at the upper farm?

A. I stayed at the upper farm until the Mexican war broke out.

Q. What year was that?

A. I never kept the date.

Q. You have stated, I believe, that you stayed in town here 10 years after 1840?

A. Yes, sir.

Q. And then you went out to the farm and stayed there until the Mexican war broke out?

A. Yes, sir.

Q. How long had you been there before the Mexican war broke out?

A. Not very long.

Q. Well, how long?

229 A. I have no exact recollection.

Q. Had you been there as long as a year?

A. I don't think I had.

Q. After the Mexican war broke out, where did you go?

A. I went on the canal, sir.
Q. Then you did not see this place any more, did you?
A. Yes, sir.
Q. How did you see it? If you were on the canal you could not see it, could you?
A. I passed there.
Q. How often did you pass?
A. I don't recollect.
Q. Did you know who owned it then?
A. It was still in the same possession.
Q. How high was this hedge in 1840?
A. I don't know that the hedge was much more than about 10 feet.
Q. Do you think it was 10 feet?
A. Yes, sir; I guess it was.
Q. Was it a good hedge all the way around where it grew?
A. The hedge was a very good hedge, only it was not properly taken care of.
Q. Then it was not good in places?
A. It wasn't topped off as it should have been.
Q. Well, were there any breakes or openings in it?
230 A. I never noticed.
Q. You heard what the last witness said. He testified that about 1840 there were openings, and planks had to be put in them.
A. It is very likely so; I never noticed.
Q. This may be so, but you do not recollect?
A. I never took notice.
Q. You had no business in that square, did you?
A. No, sir.
Q. Did you ever go in it?
A. No, sir.
Q. Did you ever examine all around it to see whether there were any openings in it?
A. No, sir.
Q. You say somebody used to put cattle out of the slashes. Who was it?
A. Henry Walker and Lewis Walker.
Q. But I understood you to say that they enclosed part of that?
A. They had it enclosed all around.
Q. Then they kept their cattle in their own enclosure, didn't they?
A. I suppose they had the privilege to run around.
231 Q. Now, when they made this enclosure that you speak of, did they not put their cattle in their own enclosure?
A. Yes, sir.
Q. Then, if the cattle was in their own enclosure, there was no danger of it getting in this square, was there?
A. Mr. Pierce built part of the fence between him and the cattle and Mr. Abbott another part of the fence.

Q. They made Mr. Abbott's fence part of their enclosure, did they?

A. Yes, sir; where it was not enclosed it came down Boundary a little off 14th street.

Q. Then there was an enclosure joining Mr. Abbott's enclosure on one side?

A. Joining onto Mr. Tenally and a colored man by the name of Brooks. Mr. Abbott's enclosure was over on the west side of the slashes.

Q. Where was this enclosure of the Walkers which you have been speaking of?

A. He ran from Abbott's square, on 17th St., over to 14th.

Q. He had enclosed from 17th to 14th, had he?

A. Yes, sir.

Q. And he put cattle in there?

A. Yes, sir.

232 Q. Do you know whether he claimed that land?

A. I don't know.

Q. In those days people put up an enclosure when they felt like it, did they not?

A. Not that I know of.

Q. How long were you on the canal?

A. I think it was in February I went on the boat, and I quit there in July.

Q. That was in what year?

A. I only staid there four or five months.

Q. What year are you speaking of?

A. It was the year the Mexican war broke out.

Q. Where did you go after you left the canal?

A. Out on the Eastern branch, out on what they call the Benning's road.

Q. After you went out there you didn't see very much of this square, did you?

A. No, sir; I very seldom saw it.

his
EPHRIAM x BARNES.
mark.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

233 *Testimony of John Proctor.*

JOHN PROCTOR, a witness on behalf of the complainant, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.

A. John Proctor; I live on L St. bet. 17th and 18th N. W., No. 1735. You almost got too close to me in respect of my age. I was

formerly raised in Maryland and had to serve a term of service, and they would hardly give a man to understand his right age, but I did hear by a certain person the year that I was born. They said I was born the year 1816.

Q. That is as near as you know your age?

A. That is all I know.

Q. What is your present occupation?

A. Anything I can get to do.

Q. Daily labor?

A. Daily labor.

Q. Do you know a square in this town that lies in the northwestern part of the city, between 17th and 18th and T and U streets, near the boundary?

A. Yes, sir.

234 Q. Did you ever work on that square?

A. Yes, sir.

Q. When was that?

A. Well, somewheres about 1848.

Q. How long did you work there?

A. Well, a year or a little more, perhaps, for Joseph Abbott.

Q. Was this square enclosed at that time?

A. Yes, sir; pretty well enclosed.

Q. Was there a good fence around it?

A. A good fence; yes, sir.

Q. What was this square used for?

A. For grass, turnips, potatoes, &c.

Q. Who was it that had the work done on the square and made use of it?

A. Mr. Joseph Abbott.

Q. During the year that you were there this square remained enclosed and was cultivated in this way, was it?

A. Yes, sir.

Q. Did you hear any one claim at that time to own this square besides Mr. Abbott?

A. Mr. Abbott told me it was his place.

Q. Did you ever hear any one else claim it?

A. Nobody. There was a little square above that that came off in a V shape. They offered to sell it to me, or the

235 man offered to give it to me, if I married a girl he had there.

Q. Did you know anything about this square after you left the employ of Mr. Abbott?

A. Yes; years after. I lived here in the city all the time and knew it for years after that.

Q. Do you know whether it was cultivated and enclosed after that?

A. Oh, yes; he kept it enclosed because the cattle would jump in if the fence was not secure. It was all mire there, and a cow or horse would get mired. It was all slashes there. There was a road went around the edge of that place there that went to Georgetown.

Cross-examination.

By Mr. GARNETT:

Q. You say it was all slashes out there at that time?
A. Yes, sir.
Q. And cattle and horses would get mired?
A. Yes, sir; because there was so much mud.
Q. You worked there in 1848, you say?
A. Yes, sir.
236 Q. How long had you been there?
A. Until about when Gen'l Scott fought the battle of Mexico—I mean I came here about then.
Q. Was that the year you came here?
A. Yes, sir.
Q. How long had you been here before you went to work there?
A. I had been here several years, but I went back to the country again; but I came here to make it my residence at the time Scott fought that battle.
Q. How long had you been here from the occasion that you came at the time Gen'l Scott captured the city of Mexico until you went to work for Mr. Abbott? How long after your coming here at that time was it before you went to work for Mr. Abbott?
A. A very short time after that.
Q. Was it six months or a year or what?
A. I am not posted on that.
Q. What did you first do when you came here on that occasion?
A. In the first place, when I came here——
Q. I am talking of the time when you first went to work.
237 A. I then worked about the canal, piling up wood and throwing up sand.
Q. How long were you working around at that before you went to work for Mr. Abbott on this place?
A. I suppose 2 or 3 months.
Q. And you say you worked for him for about a year?
A. Yes; maybe more or less.
Q. Then where did you go to work?
A. Well, after this I turned my attention to mowing and cutting down grass and corn in the city here.
Q. You jobbed around?
A. Yes, sir.
Q. You had no particular business out on that square, did you?
A. Yes, sir; I used to go out there to see the girls.
Q. That was pleasure. You did not have any business out there?
A. That was the only business. I used to go out there often.
Q. You did not go out during the daytime to see the girls, did you?
A. On Sundays.
Q. Upon these occasions did you go up and examine this fencing?
A. I could see it as I was going around it.
238 Q. Did you walk all the way around it?

A. No, sir.
Q. Did you examine it?
A. I examined it while I was working there.
Q. I am talking about the time after you left. You did not go to see the fencing when you went to see the girls, did you?
A. No; but I noticed anything around there, though.
Q. How high was the hedge at the time you went to work there?
A. It was so situated that the cattle could not get in nor the hogs could not.
Q. Was it as tall as you are?
A. I could not say exactly the real height of it, but it was high enough to keep the stock out.
Q. Could you give any idea of the height?
A. Not exactly.
Q. Were there any openings where planks had to be put in?
A. There was a post-and-rail fence around a portion of it, and a house stood right on a street, so to speak. There was a street on the south side and a gate came in there, and the fencing and
239 a portion of the hedge was so situated the stock could not get in there.
Q. My question is whether there were any holes in that hedge.
A. I didn't see any.
Q. Didn't you see any openings where planks had to be placed to keep the stock out?
A. No, sir.
Q. For how long a period were you going out there in that locality?
A. I could not exactly say. I looked at it from time to time as I passed there.
Q. Do you think the period was as long as 2 years?
A. Yes.
Q. Was it three or four years?
A. I suppose about 8 years.
Q. That is guess-work. During those 8 years where were you working?
A. I was working at anything I could get to do.
Q. You were jobbing around?
A. I think I was then carrying the hod.
Q. For whom were you working, if for any one, if you remember?
A. I worked for Thomas Langley, brick-layer.
240 Q. During the whole of these 8 years were you carrying the hod?
A. Yes, sir; for 14 years afterwards.
Q. I thought you told me that when you left Mr. Abbott you went to mowing?
A. That was before I left.
Q. Then as soon as you left you went to carrying the hod and carried it for 14 years?
A. Yes, sir.
Q. You did not have any business with Mr. Abbott after you left him, did you?

A. No, sir.
Q. Where do you live now?
A. L St. bet. 17th and 18th.
Q. You stated that you were told you were born in what year?
A. I was told that I was born in 1816.
Q. You do not claim to be 70 years old, do you?
A. I don't know my age exactly, but that is what they said.
Q. Do you know how old you were when you came to Washington?
A. No, sir; not exactly. I only have it just as they told me. I don't claim to be 70, and know no more than as they told me.

JOHN PROCTOR.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

241 The further taking of testimony was adjourned until January 11th, 1886, 2 o'clock p. m.

L. CABELL WILLIAMSON,
Examiner in Chancery.

WASHINGTON, D. C., *January* 11, 1886—2 o'clock p. m.

Met pursuant to adjournment.
Present: Messrs. Hillyer and Ralston, counsel on behalf of the complainant; defendants not represented.

W. S. Graham Recalled.

WILLIAM S. GRAHAM, a witness on behalf of the complainants, recalled.

By Mr. HILLYER:

Q. When you testified the other day you made some statements with regard to the value of the tract of ground in controversy—square No. 151. Have you since then thought over this matter in such way as to arrive at more definite information in regard to valuation?
A. After I passed out of this house the other day I thought over it, and by referring to a piece of ground which my father bought in that neighborhood about 1840 I found I was greatly mistaken in my estimate the other day.
242 Q. To the best of your knowledge, what do you now say was the actual value of this square of ground, say, in the year 1840?
A. Well, Judge, the other day I put it at so much a foot, but in those days we really did not sell by the foot. We sold by the lot of one-quarter and one-half acre, &c. I really think, from the way we used to purchase and the price at which I could have bought ground around that neighborhood, this ground belonging to Mr. Abbott could not have been worth more than about one-half a cent a foot at the full valuation.

nfine yourself to stating what that ground was worth

A. I presume the whole square would not have brought over six or seven hundred dollars. Honestly speaking, that, I think, would be the highest figure, according to what I could have bought at at that date around there. In fact, I could have bought superior ground at that rate.

243 Q. After 1840 do you know of any other ground in that neighborhood being sold or offered for sale upon which you base your opinion as to valuation?

A. Only that place I speak of.

Q. Which place is that?

A. Square 93.

Q. The whole of that square was sold for what?

A. For $900, to Dr. Austin, of Georgetown.

Q. Which was the more valuable—square 93 or this square 151?

A. Square 93 was worth twenty of it. Square 93 was high and dry and was there at the outlet at 20th — and Connecticut avenue and Columbia street. Taking all its advantages into consideration, it was worth twenty squares like 151.

Q. Would it have b-ought in the market about twice as much as square 151?

A. Yes; three or four or five times as much, sir.

Q. And this square 93, you say, was sold for $900 after 1840?

A. Yes, sir; sold for $900 to Dr. Austin.

WM. S. GRAHAM.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

244 SAMUEL R. TINKLER (recalled).

By Mr. HILLYER:

Q. In your former examination you stated the condition of the enclosure around square 151 in the year 1840. Are you able in any way to state that more in detail—more definitely?

A. I can go back to 1838 and come up to 1855.

Q. Fix it at the year 1840. Have you some way of stating the condition of this enclosure with regard to details?

A. I drew a little plan, which I have here, so as to get it down to a fine point, and I can show it better by this plan than I could describe it in any other way.

Q. Is the plan you have before you the one you have drafted?

A. Yes, sir.

Mr. HILLYER: I offer this plat in evidence and ask the commissioner to mark it.

(The plat referred to is made a part of this testimony, attached hereto, and marked Exhibit B.)

(Here follows diagram marked p. 245.)

246 Q. According to this plat you have made, d
closure as it was at the time we have referred to

A. Here was 17th street running along here (indicating), and the way along here was a hedge, and then there was a ditch about 3 feet wide and about 3 feet deep. This is T street (indicating). The hedge ran along that street up as far as this gate here.

Q. This is from 17th street up to the gate?

A. Yes, sir; then there was a ditch here up to a fence where old Kitty Rounds lived.

Q. That is from the gate out to this place where you have marked a fence?

A. Yes, sir.

Q. Was her ground outside of this square?

A. She was right in the middle of the street, and the hedge ran all the way along T street up to 18th street. There was a little stile here (indicating) to go over. The hedge was cut off about 2 and a half feet high, and this stile or steps were put there so she could go in and out. The ditch did not go any further than to her enclosure.

247 Q. Then the ditch stopped at the place Kitty Rounds' enclosure is marked?

A. Yes, sir; and there was a hedge along from there up which was said to be 15 feet high. The reason of that was because there were a lot of young locust trees growing up, and they were probably over 20 ft. high, which made the hedge look higher there than on 17th street.

Q. What was the actual height of the hedge?

A. About 10 ft., but in some places not that high.

Q. Was the hedge along T street a good, close hedge?

A. A good, close hedge was between here and there (indicating) where she was fenced in; that is where old Peter Rounds' place was, and the hedge there was not so good, because it did not make any difference, as the cattle could not get through; then when you got on this side of her place again——

Q. That is on the west side, is it?

A. Yes; at 18th street. There was a hedge there again and a place in there where it was not so good, and a piece of board was put
248 there so that the cattle could not get through. I crawled through many a day when I used to go in after apples. Around 18th street there was a fence all the way. It was not so good in places, but, as there was a branch which ran along there, it afforded good protection to the place. Then a great many bushes had grown along there, and fox-grape vines which was good protection.

Q. Was that fence good enough to turn stock?

A. Oh, yes; because when you got to Ricard's place he had a gate at the corner of 18th and U to keep the cattle from coming in there, so it didn't make any difference whether there was such a good fence along there or not. There was a big five-board gate there, too. On U street there was one part of the hedge out at the corner.

Q. That is at the corner of 17th and U?

A. Yes, sir; and a pair of bars where they could come in from that side.

Q. That is near 17th street?

A. Yes, sir; just where I have it marked here; then from
249 those bars up until you got about 20 or 25 feet from 18th street. The hedge was right in this corner, and Ricard's house stood outside of Abbott's place on the north. There was a big clump of bushes which stood at the corner, on 18th and U streets, and the branch ran around that clump. The branch ran down through Mr. Cox's place and crossed the road down to this corner (indicating), and turned down 18th street and ran on down.

Q. Did this enclosure as you have described it include the whole square 151 as it is to-day?

A. I should judge it did.

Q. It substantially included the whole square, did it?

A. Yes, sir; a man hardly ever fences in less than what belongs to him.

Q. I understand that this diagram shows how that place was enclosed in the year 1840?

A. Yes, sir; that is just about the way I can recollect it.

S. R. TINKLER.

Subscribed and sworn to before me this 11th day of Jan., 1886.

L. CABELL WILLIAMSON,
Examiner in Chancery.

250 JOHN PROCTOR (recalled).

By Mr. HILLYER:

Q. Since your last examination do you find it necessary, upon further consideration, to make any correction in your testimony given heretofore as to your age?

A. Well, I do, because I did not exactly know my age, as I told you at the time, but I have since found out my age.

Q. What is it?

A. Sixty-three.

JOHN PROCTOR.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

251 *Testimony of C. H. Mullin.*

CHARLES H. MULLIN, a witness on behalf of the complainant, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.

A. Charles H. Mullin. I will be 57 the 28th of this February coming. I live at 1425 Sampson street. I am a hack-driver.

Q. Where did you live in the year 1840?
A. K St., bet. 15th and 16th.
Q. Were you raised here in this city?
A. I was born here in this city, right down on K street.
Q. Do you know now the square up in the northwestern part of the city which lies between 17th and 18th and T and U streets, near the Boundary?
A. Yes, sir.
Q. Did you know that square when a boy?
A. Yes, sir.
Q. How early do you recollect having known it?
A. I must have been about 13 years old when I used to run around it—between 12 and 13. I played all around there and I used to haul hay off it.

252 Q. Do you remember when Gen'l Harrison became President?
A. Yes, sir; and the Vice-President lived on 16th St.
Q. It seems that about that time you were 10 years old?
A. Yes, about 10.
Q. How soon after that do you remember having seen the square which I have described, or did you see it at that time?
A. Yes, sir; I saw it at that time, because I used to run out that way before that time. I used to go out there in the branch to swim.
Q. At that time was the square enclosed?
A. Yes, sir.
Q. What kind of an enclosure did it have around it?
A. It had a good rail fence around it.
Q. Was it all enclosed with a rail fence?
A. Not all; some parts of it.
Q. How was the other part enclosed?
A. Around the other part it was a kind of half-way fence.
Q. Was there any hedge around it?
A. Yes, sir; a hedge and bushes.

253 Q. Do you know whether that square at the time we refer to was cultivated or used by any one?
A. Yes, sir; I think it was. There were apples, peaches and one thing and another on it, and, I think, cabbages, too. It was cultivated right good. There was corn on it.
Q. Do you know whether any hay was raised upon it?
A. Yes, sir; a right smart of hay was raised on it, because I helped to load the hay and haul it for a man by the name of Mr. Bush.
Q. From whom did Mr. Bush buy the hay?
A. I don't know; but I think he said he leased from Mr. Riggs.
Q. Did you know Mr. Joseph Abbott?
A. I remember him, but didn't know him. I knew the old man afterward.
Q. Did you know who owned this place or claimed to own it at that time?

A. Old man Abbott.

Q. Now, from whom did this man Bush buy his hay?

A. I don't know the man on the place at that time. I know Jim Bush bought a whole crop of hay there.

Q. Do you know from whom the hay was bought?

254 A. I disremember the man's name now. I don't know the man's name now; but I think I would know it if I heard it called.

Q. Well, who was occupying the ground at that time?

A. The man that sold the hay.

Q. I understood you to say that Mr. Abbott owned the place at that time?

A. He owned it, but had rented it out or sold it or something or other. It appears like he had sold it. I think he said he had sold it. I don't know whether he owned it or not at that time.

Q. How old were you when you went out there to cut this hay?

A. I didn't cut any.

Q. Well, when you went out to help haul it?

A. I suppose I was going on 14 years old then.

Q. You said it appeared like Mr. Abbott had sold it. Now, do you mean sold the place or sold the hay?

A. Oh, sell the hay. There have been so many that had the place I couldn't tell who owned it and who did not. I know one time a man who turned in a lot of cattle there said he owned

255 the place—a man by the name of Sands.

Q. Do you know whether or not Mr. Sands rented that place?

A. I don't know whether he rented it or not. I know that he had a parcel of horses there.

Q. Were those horses put in there before or after the crops were taken off?

A. After the crops were taken off.

Q. By whom were the crops taken off?

A. I don't know. I couldn't tell you who took them off.

Q. Was it every year cultivated in crops?

A. Yes, sir.

Q. How long did you know that to be the case? From 1842, did you know the place as a fact to be cultivated from year to year?

A. I know from that time up to 19 or 20 years to be cultivated, because a man by the name of Beckett had it at one time and he raised a right smart on it.

Q. Did you used to go out there every year?

A. Yes, sir; and even when I commenced driving I used to go out there to the burying-ground.

256 Q. Was there any year during the period you have named when you did not see this square cultivated?

A. No, sir; not until here of late years.

Q. Did you ever hear of anybody else except Mr. Abbott claiming to own the place?

A. No, sir; I always did hear that it belonged to Mr. Abbott. I

heard it was leased to different parties, but that Mr. Abbott was the owner.

CHARLES H. MULLIN.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

257 *Testimony of Frank Wilson.*

FRANK WILSON, a witness on behalf of the complainant, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.
A. Frank Wilson; 44 years of age. I reside at 725 12th St. N. W. I am assistant assessor of the District of Columbia.
Q. Have you charge of the assessors' books in the District of Columbia?
A. Yes, sir; to a certain extent.
Q. Do the books which you have in charge there run back as far as 1837?
A. Yes, sir.
Q. Look at this paper and state if you made it and what it is.
A. I made it. It is a statement of the assessed value of square 151 from 1834 down to 1885.

Mr. HILLYER: I offer this paper in evidence and ask the commissioner to mark it.

(The paper referred to is made a part of this testimony, attached hereto, and marked Exhibit C.)

258 COMPLAINANT'S EXHIBIT C.

Square 151, subs. —.

Year.	To whom assessed.	Assessed value.	Amount of tax.	Remarks.
1834	Thomas T. Tucker heirs	753	8 28	
1835	do.	753	8 28	
1836	do.	753	5 64	
1837	do.	753	5 64	
1838	do.	753	5 64	
1839	do.	736	5 52	
1840	do.	736	5 52	
1841	Joseph Abbott	736	5 52	
1842	do.	736	5 52	
1843	do.	736	5 52	
1844	do.	890	6 68	
1845	do.	890	6 68	
1846	do.	890	6 68	
1847	do.	890	6 68	
1848	do.	890	6 68	
1849	do.	736	5 52	
1850	do.	736	5 52	
1851	do.	736	5 52	
1852	do.	736	5 52	
1853	do.	736	5 52	
1854	do.	5,930	41 51	
1855	do.	5,930	35 58	
1856	do.	5,930	38 55	
1857	do.	5,930	44 48	
1858	do.	5,930	44 48	
259				
1859	Joseph Abbott	7,408	44 45	
1860	do.	7,408	48 15	
1861	do.	7,408	37 04	
1862	do.	7,408	55 06	
1863	do.	7,408	55 06	
1864	Alexander J. Perry	5,923	65 15	
1865	do.	5,923	59 23	
1866	do.	5,923	65 15	
1867	do.	5,923	73 54	
1868	do.	5,923	88 85	
1869	Henry A. Willard	35,723	500 12	Subs. 17, 18, 19, 23, 24, 27 to 149.
1870	do.	35,723	643 01	
1871-'2	do.	35,723	607 29	
1872-'3	do.	27,788	472 89	
1873-'4	James M. Latta, trust.	36,530	730 60	
1874-'5	do.	36,530	1,095 90	
1875-'6	do.	34,507	517 61	
1876-'7	do.	34,507	517 61	
1877-'8	do.	34,507	517 61	
1878-'9	do.	24,693	370 40	
1879-'80	do.	24,693	370 40	
1880-'1	Noah L. Jeffries, trust.	24,693	370 40	
1881-'2	do.	24,693	370 40	
1882-'3	John B. Alley	24,693	370 40	
1883-'4	do.	47,666	714 99	
1884-'5	do.	47,666	714 99	

260 Q. From what is that statement taken?
A. From the tax books.
Q. And they are in your office, are they?
A. Yes, sir.
Q. Is that a correct transcript from the books?
A. Yes, sir.
Q. And what period does it include the assessment of the whole square?
A. From 1834 to 1858, inclusive.
Q. And what is included after that?
A. Sublots 17, 18, 19, 23, 24, and 27 to 149, inclusive.
Q. The assessed value in the year 1837 was what?
A. $753.
Q. And in 1840 what was the assessed value?
A. $736.
Q. Do you know whether these taxes were paid?
A. Apparently they were, with the exception of one year.
Q. What do you mean by apparently they were?
A. They are credited in the tax books regularly.
261 Q. Do you know whether they were paid by the parties to whom they were assessed?
A. I do not.
Q. Is there anything upon the books to show that they were paid by any one other than the parties to whom they were assessed?
A. No, sir.
Q. You say there was one year when it appears the taxes were not paid?
A. Apparently they were not paid. There is no credit for one year.
Q. What year?
A. I have not a memorandum, but I think 1837.
Q. But since then the taxes have been paid.
A. With the exception of this one year the taxes have always been paid.
Q. Do you know how the taxes were paid for the year 1837; whether voluntarily or not?
A. The property was sold for taxes.
Q. In what year?
A. November 4, 1837.
Q. What was the amount of the taxes for which it was sold?
A. $38.76.
Q. What were the costs connected with the sale?
262 A. $2.30.
Q. For how much was the property sold?
A. $250.
Q. Who bought it?
A. Joseph Abbott.
Q. Do you know whether that $250 was paid?
A. Apparently it was paid.
Q. Do the books show that it was paid?
A. Yes, sir.

Q. What was done with the surplus over and above the amount which was used in the payment of the previous taxes and the costs?

A. I could not say. It was apparently carried to the surplus fund.

Q. Has that amount yet been drawn by any one?

A. There is no evidence that it has.

Q. Do your books show when the tax deed was made?

A. Yes, sir.

Q. What time was that?

A. November 2, 1840.

FRANK WILSON.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

263 *Testimony of Clement Beckett.*

CLEMENT BECKETT, a witness on behalf of the complainants, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.

A. Clement Beckett. I am 69. I live on West O street, Washington, D. C., No. 2617. I am a dealer in the market.

Q. Mr. Beckett, how long have you lived in the District of Columbia?

A. All my life nearly.

Q. Do you know of a piece of ground in the city situated between 17th and 18th and T and U streets, square No. 151?

A. Yes, sir.

Q. Did you ever have any connection with that piece of ground?

A. Yes, sir.

Q. In what way?

A. In 1854 I leased it from Joseph Abbott, a resident of this city.

Q. For how long did you lease it?

A. 10 yrs., with the privilege of buying it.

Q. What was the rent which was to be paid to Mr. Abbott for it?

A. I paid $100 a year.

Q. Was this contract of lease in writing?

264 A. Yes, sir; in writing.

Q. Do you know where that writing is?

A. I don't know exactly where.

Q. Have you searched for it?

A. Yes, sir. I have found something this morning, but did not find that.

Q. It should be in your possession, if anywhere, should it not?

A. It should be, but of course it is so long since that maybe the paper has been mislaid.

Q. And you are unable to find it?
A. Unable to find it.
Q. And you consider it lost, do you?
A. Yes, sir.
Q. After making the lease, did you occupy and cultivate that ground?
A. Yes, sir.
Q. At the time when this lease was made in 1854 was the ground enclosed?
A. Oh, yes; it was all enclosed.
Q. What was the character of the enclosure?
A. Part was enclosed in a thorn hedge, and the other part was a running fence made of planks about 16 ft. long, and where the hedge was broken it was mended with planks.
265 Q. Was the fencing in good repair when you took the place?
A. When I took it, it was.
Q. Was the fence sufficient to turn stock and preserve the crops?
A. It was at that time; yes, sir.
Q. How long did you occupy the place under your lease?
A. I occupied it from that time up to the latter part of 1862, I think it was.
Q. During those years, what did you do with it?
A. I cultivated it in what we call truck—different kinds of vegetable—and part, of course, I had in grass.
Q. Did you cultivate it every year?
A. Every year.
Q. Was the enclosure kept up during the whole period while you were there?
A. Yes, sir; kept up the whole time. Of course, I kept it up while I was there.
Q. Did you pay this rent to Mr. Abbott?
A. I paid it to old man Abbott while he lived.
Q. When did Mr. Abbott die?
A. In some part of 1861. To the best of my recollection it was some time in March or April, or somewhere about that period.
266 However, it was early in the war, when the troops first came here.
Q. Did Mr. Abbott claim to be the owner of this square?
A. Yes, sir.
Q. Did you ever during the 8 or 9 years which you were there hear of anybody but Mr. Abbott claiming to be the owner of this ground?
A. Nobody else but him.
Q. Did you keep the property up to the termination of your lease?
A. No, sir. I leased for 10 years, and did not have it for the last 2 years.
Q. Why did you not keep it through the whole term?
A. It was on account of the soldiers.
Q. State what occurred in this connection.
A. In the first place, in 1861 the soldiers commenced tearing everything to pieces, the fences, and destroying my crops, and so on. That

was in 1861. I stood it up to the spring in 1862, when I rebuilt the fence and went to work and put in a crop. I had some 3 or 4 hands there at the time. The soldiers had gone down into Virginia, but when McClellan came back they came on me again. The
267 Pennsylvania Bucktails and other regiments there burnt up the fences and took my tools and everything of that kind.

Q. You stated that you left there in 1862.

A. Yes, sir; about August, 1862.

Q. And this trouble with regard to the soldiers was the cause of your leaving?

A. Yes, sir; that was the cause.

Q. Did they take away, up to the time you left, the entire fence?

A. No, sir; but they took all the best of it—such as suited them. Of course there was some there that wouldn't do them any good, but they took all the best planks, and so on.

Q. Were the posts standing at the time you left?

A. Yes, sir; a portion of the posts were standing.

Q. And the hedge, I suppose?

A. Yes, sir; the hedge was left there.

Q. Did you ever have any building on the place?

A. I had a small one, or what you might term a shanty.

Q. Was that there at the time you took possession?

A. No, sir; there was a house not on it, but adjoining there, and was used for that place.

268 Q. You lived in another building near the square, but not on it?

A. Yes, sir.

Q. When did you put up a house on the square?

A. Well, the next year—in 1855.

Q. Did that house stand there up to 1862?

A. Yes, sir.

Q. Did the soldiers molest that house?

A. They only took that portion of it that they wanted.

Q. You mean they only left the skeleton of it?

A. Yes, sir.

Q. And that was on the ground at the time you left?

A. Yes, sir.

Q. After the death of Mr. Abbott, did you pay any rent to any one?

A. Yes, sir.

Q. To whom?

A. At first I paid to Mr. Abbott's son. He called on me and said he wanted to collect the money; but after that I found out better, and went and paid the money to the old lady—Mr. Abbott's wife. She claimed it, and I paid it to her up to the time I left.

Q. Who occupied that shanty in 1861 and 1862?

269 A. I did, or at least the hired men were in there. I was there myself backwards and forwards, but I did not live there.

Q. Was there any one who disputed your possession while you were there?

A. No, sir; nobody at all.

Q. Do you know who paid the taxes on the property during that time?

A. Mr. Abbott.

Q. You were not to pay the taxes, were you?

A. No, sir; he paid the taxes.

CLEMENT BECKETT.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

Adjourned to January 12th, 1886, at 1 o'clock p. m., at same place.

L. CABELL WILLIAMSON,
Examiner in Chancery.

270 WASHINGTON, D. C., *January 12th*, 1886—1 o'clock p. m.

Counsel for complainant present; defendants not represented.

Testimony of Henry A. Willard.

HENRY A. WILLARD, a witness on behalf of the complainant, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.

A. Henry A. Willard; I am of lawful age; I reside at 1333 K St., Washington, D. C.; I am president of the Columbia Railroad Company and the Columbia Insurance Company.

Q. Do you know a piece of ground in this city called square No. 151?

A. I do.

Q. Did you ever own it?

A. I owned it at one time.

Q. When did you purchase it?

A. The deed is dated April 2, 1868.

Q. From whom did you purchase?

A. From Alexander J. Perry, U. S. Army.

Q. How long previous to your purchase had you been familiar with this square or seen it or known it?

A. Since 1847.

271 Q. At the time you first saw it state whether or not it was enclosed.

A. It was enclosed by a sort of one-half board fence—I should think two boards and a ditch, with a hedge planted on one side of it. I should say it was enclosed by fence and hedge and ditch.

Q. Was it so enclosed as to keep out stock?

A. Oh, yes; it was known as Abbott's farm and was cultivated.

Q. Was the fence sufficient to protect the crops?

A. Oh, yes; there were also apple trees on the place. I recollect those very well.

Q. Do you know who claimed to be the owner of it at that time?

A. Joseph Abbott.

Q. Did you know Mr. Abbott personally about that time?

A. Yes, sir; he was a neighbor of mine, living close by here. I knew him well.

Q. What acts, in reference to these premises, did you know of Mr. Abbott's doing at that time and subsequently?

A. I knew that he cultivated them and it was enclosed. I have seen him cut hay and seen him draw hay from there.

272 Q. Well, what do you say as to the condition of these premises from that time onward, from 1847, say, to the time of your purchase?

A. Well, it was occupied and cultivated until some time after the war—perhaps in 1863.

Q. That is, after the war commenced?

A. That is what I mean—after the war commenced. During the war it was occupied by soldiers and corrals of horses and mules.

Q. Until, say, some period during the war, when these soldiers interfered with it, what do you know with regard to its being enclosed and under cultivation?

A. I know it was from 1847 until 1862 or 1863.

Q. Did you have occasion often to see this square during that period?

A. Yes, sir; I often saw it; I know it well.

Q. Do you know who claimed to be the owner or who exercised acts of ownership during that time?

A. Yes, sir.

Q. Whom?

A. Joseph Abbott.

273 Q. Do you know what time Joseph Abbott died?

A. I should think he must have died—stating it from recollection—about 1861.

Q. Do you know who claimed the property after his death?

A. His widow.

Q. Do you know who claimed the property after the death of his widow?

A. Alexander J. Perry bought it of the widow.

Q. At the time of your purchase what was the condition of the property?

A. The fences were pretty generally destroyed then. There was some posts left, and there was a frame shanty there occupied by a negro man, who had charge of it.

Q. Do you know for whom that negro had charge of it?

A. He had charge of it for Mr. Perry.

Q. Do you know by whom that shanty was built?

A. No; I do not. It was and had been there some time before I bought it.

Q. Did you know a man by the name of Beckett, the tenant of Mr. Abbott?

A. Yes, sir.

Q. Did you know of his having a shanty upon this

274 ground?

A. I know there was a shanty there when Mr. Abbott had it.

Q. Was the shanty you saw there in 1868 located in the same place where this Beckett shanty was?

A. Yes, sir. I think just about the same place, or in the immediate vicinity.

Q. Was it the same character of structure?

A. Yes, sir; it seemed to be the same character of structure.

Q. Is there any reason, so far as you know, for supposing it to be a different structure?

A. No, sir; none at all.

Q. What did you pay for this place?

A. I paid at the rate of 6 cents per square foot.

Q. How much did that amount to in all?

A. About $17,000 and some hundred dollars. There was a little less than 300,000 feet.

Q. How long did you remain the owner of that property?

A. I think until about June, 1872.

Q. What did you do in reference to this property during the period that you were its owner?

275 A. I commenced building houses on it the very season I bought it.

Q. Did you make any different subdivision of the lots?

A. There was a subdivision on paper which I accepted. A street was run through, and I recorded it. You might say I made the subdivision, and it was called Willard's subdivision.

Q. At the time of your purchase what was this ground regarded valuable for?

A. It had ceased to be valuable for agricultural purposes, although land in the immediate vicinity was under cultivation. It was, however, becoming valuable by the general advance of real estate.

Q. For what purpose?

A. For building purposes.

Q. You said that you put up some buildings. How many did you put up?

A. I put up 12.

Q. Upon what part of the ground were they put?

A. On T St.

Q. How far on T street did they extend?

276 A. They extended certainly two-thirds of the front—that is, there were houses on alternate vacant lots.

Q. Did you continue to own any of these houses or all of them up to the time you sold the property?

A. I had sold most of them.

Q. Did you retain some of them?

A. Yes, sir; one or two.

Q. During the time you owned this ground, that was the extent of which you claimed possession there?

A. I claimed possession to the whole of it, the whole square.

Q. Did that continue to be the case until you sold the property?

A. That continued until I sold the houses and lots I improved.

Q. And as to them you gave up the possession?

A. Yes, sir.

Q. Did you retain it as to the balance of the square?

A. Yes, sir.

Q. What acts did you do besides the building of these houses during the time you had possession of this property?

277 A. I put down a brick pavement the entire length of the square to T street, set out a row of trees the entire length, and dug two wells for water.

Q. What do you say in reference to the taxes?

A. I paid the taxes regularly.

Q. Had the taxes on the property been paid regularly up to the time you bought it?

A. Yes, sir.

Q. During the time you owned this property, did you know or hear of any adverse claimant to it?

A. Nobody ever disputed the title when I purchased it. Before I purchased I got an opinion — to whether adverse title was worth anything.

Q. I was going to ask you with reference to that. My present question is, whether while you remained the owned of that property any one made a claim as against you, that you know of?

A. Well, at one time a party claimed that it was a tax title which belonged to the Tucker heirs.

Q. Was there any one who made any claim as against you to this property during the time you owned it?

A. No, sir.

278 Q. At the time you purchased, what steps did you take to ascertain the title of Mr. Perry to this property?

A. Before I would purchase I got the opinion of Mr. Bradley—Joseph Bradley—to whom I went to know whether or not it was a good title. In addition to that Mr. Perry delivered to me opinions from two other lawyers.

Q. Who were they?

A. Richard S. Cox and Mr. James M. Carlisle.

Q. Have you those opinions which were given you by Mr. Perry?

A. I have them. Here they are.

Q. These are two opinions that were handed you by Mr. Alexander J. Perry, are they?

A. They are, sir.

Mr. HILLYER: I offer these opinions in evidence and ask the commissioner to mark them.

(The opinions referred to are made a part of this testimony, attached hereto, and marked respectively Exhibits D & E.)

279 COMPLAINANT'S EXHIBIT D.

In the matter of the title of JOSEPH ABBOT and those holding under him to square No. 151, in the city of Washington.

I concur in the conclusion of Mr. Coxe's opinion, though not for the same reasons.

The statement of facts shows an adversary possession of more than twenty years by actual enclosure and by all the usual *indicia* of ownership.

The act of Congress approved March 3, 1865, section 2, repeals and abrogates all exceptions in favor of persons beyond the District of Columbia in all suits brought more than three years after the passage of that act, a period now elapsed, and thus all doubt as to the effect of any paper title that might be set up by the heirs of Thomas Tudor Tucker is put at rest. In any action brought by them it would not be necessary to rely on the tax title, but a complete bar would be established by adverse possession.

As to the tax title, Mr. Coxe does not advert to the real ground of objection, if any there be. This is founded upon the language of the amended charter of 1824, which, while it dispensed the
280 corporation from advertising the property in the "name of the true owner," nevertheless required the advertisement to give "the name or names of the person or persons to whom the same may be assessed on the books of the corporation at the time of the advertisement."

In a case not reported, and which I know of only from the common tradition of the bar, the circuit court held a tax title bad under this clause because the property had not been assessed on the books of the corporation in the name of any person, but as the property of "the heirs" (unnamed) of the former owner.

If any such decision was made it seems to me plainly erroneous. The object of the act of 1824 was to release the corporation from the necessity of ascertaining the name of the true owner--not to require it to ascertain the names of the heirs (often very difficult to determine) of a deceased person. I think the amended charter of 1824, in effect, meant to authorize the advertisement to follow the assessment on the books. I have no doubt that an assessment to "the heirs of A. B."—a deceased person—is a
281 sufficient assessment. A feoffment at common law to the heir of A. B. was a good feoffment without naming the heir, and an assessment, a mere charge upon the land, could hardly require greater certainty.

I am of opinion, therefore, that the tax title is valid if, as I understand, that is the only objection taken to it.

17 March, 1868.

J. M. CARLISLE,
436 *D Street.*

282 COMPLAINANT'S EXHIBIT E.

Case as presented to me for my opinion in section to the title to square No. 151, in the city of Washington.

This entire square is stated to have been the property of Thomas Tudor Tucker, a gentleman well known in this city and who for some years occupied a high and important office under the Government of the United States. His title to this property has not been questioned. Mr. Tucker was the owner of this property from 1829

and regularly paid the taxes assessed upon it under the authority of the corporation from that period until he left this city and removed to the South, where he soon died. It is represented that he died without issue, and no collateral heirs have presented themselves or claimed any interest in this property.

After the death of Tucker this square was assessed on the books of the corporation in the name of and as the property of "the heirs of Thomas Tudor Tucker," and, the tax thus assessed not being paid, the square was, at the annual sale in the year 1837, sold.
283 The advertisement was in accordance with the requirements of the 2d section of the charter of the city of Washington of 1824.

No application to redeem has been made by any heir of T. T. Tucker from that day. At the sale in 1837 Joseph Abbott became the purchaser, and from that time to the present he and those claiming under him have regularly paid the taxes imposed upon the property. In 1840 Abbott obtained a deed from the corporation under the purchase thus made by him; took possession of the property, which had been theretofore unimproved; fenced it with a board fence and enclosed it with a hedge and ditch. It has thus remained enclosed and cultivated until since the present rebellion. Soldiers of the Army of the United States stationed in the vicinity have destroyed and burned the fencing and much of the hedge. Joseph Abbott died April, 1861, having first executed, in due form, a will, devising this piece of property to his wife, Elizabeth E. Abbott, in fee simple. This will has been regularly admitted to probate, and it is represented that there are no incumbrances or subsisting
284 claims against his estate. August 24th, 1863, Elizabeth E. Abbott, the devisee, conveyed this square to Alexander J. Perry, and the question propounded to me is whether Mr. Perry has thus acquired a valid title.

Opinion.

Upon the foregoing statement of the case it would seem that the validity of this title is indisputable. Indeed the only objection which it is understood has been made to it is that in the assessment of the square subsequent to the death of T. T. Tucker and in the advertisement for its sale in consequence of default in the payment of the taxes thus assessed the property is designated, accurately in every other particular, as the "property of the heirs of Thomas Tudor Tucker;" but in this case, as in all others similarly situated, the same practice was pursued.

I am clearly of opinion that this omission to designate the names of the heirs on the assessor's books and in the advertisement of sale furnishes no valid objection to this title.

Mr. Abbott became the purchaser of this property in the year
285 1837, twenty-seven years since; he obtained his deed from the corporation in 1840; his occupancy by enclosure and cultivation under this title has never been questioned; he has during his lifetime paid the taxes assessed upon it; and this long, continual, undisputed possession would of itself constitute a complete bar against

nearly every claimant. As to the specific objection which has been suggested, it is, in my judgment, wholly groundless. A brief review of the law on this point will, it is believed, remove every possible doubt. By the 5th section of the amended charter of the city of Washington of May 4th, 1812, providing for the sale of unimproved lots in the city on which two years' taxes remain due and unpaid it was distinctly provided, as an essential prerequisite to such sale, that in the advertisement "the name of the person or persons to whom the same may have been assessed and also the amount of taxes due thereon" shall be stated. In the year 1821 the construction of this provision of the charter was given in the then circuit court
286 of the District of Columbia in the case of Pratt, Francis, and others *vs.* The Corporation of the City of Washington. The opinion of the court may be found in Burch's Digest, p. 340. The case was removed to and re-examined by the Supreme Court of the United States, and it will be found reported in Burch, 347, and in 18 Wheaton, 681. In pronouncing the opinion of the Supreme Court the learned judge who was the organ of that high tribunal announced its decision upon two points which were presented upon this question: 1st, that the legislative department possessed the power of prescribing the terms and conditions upon which the validity of such sales should depend; 2nd, that under the charter as it then existed it was an essential requisite that the property should be assessed and advertised, giving the name or names of the proprietors; that the legislation and that department alone could provide for the difficulties and indeed the impracticability of complying with such a requirement. The judgment in this case, it will be perceived, was pronounced on the 14th March, 1823. At the very next
287 session of Congress, viz., on the 26th of May, 1824, a supplementary act was passed, the 2nd section of which is hereinbefore quoted, contained a provision obviously designed to remedy the difficulty which the previous law was found to present, and to do this under the authority which the Supreme Court had declared was alone competent to that object. The language employed is: "No sale of real property for taxes hereafter made shall be impaired a- void by reason of such property not being assessed or advertised in the name or names of the lawful owner or owners thereof, provided, &c." Under this law and in conformity with its other provisions Mr. Abbott became the purchaser of the property in question, and, in my judgment, this objection is utterly groundless.

RICH'D S. COXE.

Jan'y 20th, 1864.

288 Q. How far did you satisfy yourself as to the title to the property by these opinions and otherwise before you purchased?

A. I satisfied myself that it had been occupied for over 20 years as adverse possession.

Q. What was your opinion also with respect to the tax title?

A. That struck me as a good tax title. The reason I bought it was because it was reported to me that the adverse possession and

occupation for 20 years made it a good title. It was reported to me also that the tax title was good.

Q. To whom did you sell this property?

A. I sold it to James M. Latta, trustee.

Q. With whom did you conduct the negotiations?

A. With the firm of Kilbourn and Latta.

Q. They were real-estate brokers here, were they not?

A. Yes, sir.

Q. What did you get for the property?

A. I think either 10 or 11 cents a foot.

Q. How many feet were there in it?

A. The number of square feet in the entire square was a little less than 300,000, and deduct from that the lots I sold from

289 1868 to 1872.

Q. Well, was that a fair price for the property at that time?

A. Yes, sir.

Q. Was that money paid by the purchasers to you?

A. Yes, sir.

Q. What representations did you make with reference to the title to the property to the firm with whom you negotiated?

A. I represented to them the opinions of Mr. Carlisle and Mr. Cox and Mr. Bradley that it was a good title as to actual possession, and there was also good tax title.

Q. Were these written opinions you have produced shown to the purchasers at the time of your sale to them?

A. Yes, sir; to the agents and the purchasers, and they kept them for a very considerable time.

Q. How did you get them into your possession again?

A. I went to Mr. Olmstead, the successor of Kilbourn and Latta, a year or more ago for them.

Q. Did you want them for another purpose?

A. Yes, sir.

HENRY A. WILLARD.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

290 Adjourned to January 16th, 1886, at same place.

L. CABELL WILLIAMSON,
Examiner in Chancery.

WASHINGTON, D. C., *January 16th*, 1886—11 o'clock a. m.

Met pursuant to adjournment.

Complainants represented by counsel; defendants not represented.

Testimony of Joseph Williams.

JOSEPH WILLIAMS, a witness on behalf of the complainant-, being duly sworn, testified as follows:

By Mr. HILLYER:

Q. Please state your name, age, residence, and occupation.

A. Joseph Williams; I was 47 years of age the 20th of last December; I reside in Clitz alley, in this city, between 6th and 7th and R and S streets. I am driving for the District of Columbia government.

Q. How long have you lived in the city of Washington?

A. I was born and raised here, sir, and have been nowhere else.

Q. Where in this city were you born?

A. On S street, bet. 17th and 18th streets.

Q. Was there a house standing there at that time?

291 A. There was, sir.

Q. That would be about 1838, would it not?

A. Yes, sir.

Q. Do you know who occupied that house before your family did?

A. My father and mother built it themselves in the street.

Q. Were you in any way acquainted with Mr. Rounds?

A. Yes, sir; he was my uncle.

Q. What was your grandfather's name?

A. His name was Rounds, too.

Q. Did he ever live in this house?

A. He lived on T street, and the hedge used to run right back of him.

Q. Was the house of your grandfather, Mr. Rounds, in the street?

A. Yes, sir.

Q. On T street?

A. Yes, sir.

Q. Between 17th and 18th?

A. Yes, sir; between 17th and 18th.

Q. Was he living there as far back as you can recollect?

A. He died before I recollect. My grandmother lived there, as I recollect, and died there.

292 Q. Do you know the piece of ground right north of T St., between 17th and 18th?

A. I certainly do, sir.

Q. How early in your childhood can you recollect that piece of ground?

A. Since I was about 5 years old.

Q. Was it occupied at that time?

A. It was, sir.

Q. Do you know by whom it was occupied?

A. By Mr. Abbott.

Q. What Abbott?

A. Joseph Abbott, a little, low, chunky man.

Q. How long did you continue to live in that house on S street which you have mentioned?

A. Clear up to 1861.

Q. Up to that time how often did you see this ground which you mention as having been occupied by Mr. Abbott?

A. Pretty much every day, sir.

Q. Can you state whether Mr. Abbott continued to occupy it?

A. Mr. Beckett had it in charge, but who he leased from at that time I couldn't tell.

Q. But up to the time Mr. Beckett took it who occupied it?

A. Mr. Abbott.

Q. Can you state whether or not he cultivated it?

293 A. He did, sir.

Q. Did he cultivate it every year?

A. He did.

Q. What kinds of produce did he raise?

A. Sometimes corn, sometimes potatoes, and sometimes he sowed it down in clover.

Q. Did he have a fence around it?

A. He did.

Q. What kind of an enclosure was there around it?

A. One part was a hedge and one part was board fence.

Q. Was the enclosure sufficient to keep out stock?

A. Yes, sir.

Q. Was that the case from as early as you recollect up to 1861?

A. Yes, sir.

Q. Did you ever hear of anybody else besides Mr. Abbott claiming to own that property?

A. No, sir.

Q. Do you know Mr. Hudson Rounds?

A. He was my own uncle; I ought to know him.

Q. Do you know whether he worked on this ground at any time?

294 A. Yes, sir; he did.

Q. Do you know about what year it was?

A. I couldn't state.

Q. Was it before Mr. Beckett leased the place?

A. Yes, sir.

Q. For whom did he work?

A. Mr. Abbott.

his
JOSEPH x WILLIAMS.
mark.

Subscribed and sworn to before me—

L. CABELL WILLIAMSON,
Examiner in Chancery.

Mr. HILLYER: I offer in evidence the papers which I now hand the examiner and request to be marked.

(The papers referred to are made a part of this testimony, attached hereto, and lettered from F to N, inclusive, the letter I only being excepted.)

At this point the further taking of testimony was adjourned until January 20th, 1886, 1 o'clock p. m.

L. CABELL WILLIAMSON,
Examiner in Chancery.

295 COMPLAINANT'S EXHIBIT F.

Copy.

Liber N. C. T. No. 13, folio 340 *et seq.*

Elizabeth E. Abbott to Alexander J. Perry. } Deed. Recorded Sept. 26th, 1863.

This indenture, made this twenty-fourth day of August, in the year of our Lord one thousand eight hundred and sixty-three, between Elizabeth E. Abbott, of the city of Washington, in the District of Columbia, of the one part, and Alexander J. Perry, of the same place, of the other part, witnesseth:

That the said Elizabeth E. Abbott, for and in consideration of the sum of two thousand nine hundred and sixty-two dollars and seventy-three cents, current money of the United States, to her in hand paid before the ensealing and delivery of these presents by the said Alexander J. Perry, the receipt of which is hereby acknowledged, hath given, granted, bargained, and sold, enfeoffed, conveyed, released, and confirmed, and by these presents doth give, grant, bargain, and sell, enfeoff, convey, release, and confirm, unto the said Alexander J. Perry, his heirs and assigns forever, all of square numbered one hundred and fifty-one (151), the same lying and
296 being in the said city of Washington, in the District of Columbia, as the same is distinguished on the plats of lots and squares thereof, together with the buildings, improvements, rights, privileges, appurtenances, and other hereditaments to the same belonging or in any manner appertaining, and the remainders, reversions, rents, issues, and profits thereof, and all the right, title, and interest and estate of her, the said Elizabeth E. Abbott, both in law and in equity, in and to the same; to have and to hold the said described square of ground and premises, with the appurtenances, unto him, the said Alexander J. Perry, his heirs and assigns forever, to his and their sole use, benefit, and behoof forever; and the said Elizabeth E. Abbott, for herself and her heirs, executors, and administrators, by these presents covenants, promises, and agrees to and *and* with the said Alexander J. Perry, his heirs and assigns, in manner following, to wit: That she, the said Elizabeth E. Abbott, and her heirs shall and will warrant and
297 forever defend the said described square of ground and premises, with the appurtenances, hereby bargained and sold unto him, the said Alexander J. Perry, his heirs and assigns, from and against her, the said Elizabeth E. Abbott, her heirs and assigns, and all persons claiming or who may claim by, under, or through her, them, or any of them; and, further, that she, the said Elizabeth E. Abbott, and her heirs shall and will at any and all times hereafter, at the request and cost of the said Alexander J. Perry, his heirs and assigns, make and execute any and every other deed of assurance in law for the more sure and effectual conveyance

of the said described square of ground and premises, with the appurtenances, to the said Alexander J. Perry, his heirs and assigns, that the said Alexander J. Perry, his heirs or assigns, or his or their counsel learned in the law shall or may devise, advise, or require.

In testimony whereof the said Elizabeth E. Abbott hath hereunto set her hand and seal the day and year first hereinbefore written.

ELIZABETH E. ABBOTT. [SEAL.]

Signed, sealed, and delivered in the presence of—

——— ———.

[Stamp, E. E. A. Aug. 24. Aug. $5.]

298 DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

I, Nicholas Callan, a notary public in and for the county and District aforesaid, do hereby certify that Elizabeth E. Abbott, party to a certain deed, bearing date the twenty-fourth day of August, A. D. 18—, and hereunto annexed, personally appeared before me, in the county aforesaid, the said Elizabeth E. Abbott being personally well known to me as the person who executed the said deed, and acknowledged the same to be *his* act and deed.

Given under my hand and official seal this twenty-fourth day of August, A. D. 1863.

N. CALLAN,
Notary Public.

[SEAL.]

Indorsement.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber N. C. T. No. 13, folio 340, *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., November 14th, 1885.

[Recorder's Seal.]

GEO. F. SCHAYER,
Dep. Recorder.

299 "COMPLAINANT'S EXHIBIT G."

Copy.

Liber E. C. E. No. 31, folio 344 *et seq.*

Alex. J. Perry to Henry A. Willard. } Deed. Recorded 3rd April, 1868.

This indenture, made this second day of April, in the year eighteen hundred and sixty-eight, between Alexander J. Perry and Josephine A., his wife, of the city of Washington and District of Columbia, of the first part, and Henry A. Willard, of the same place, of the second part, witnesseth:

That the said Alexander J. Perry and Josephine A., his wife, in consideration of the sum of seventeen thousand seven hundred and seventy-six dollars and thirty-eight cents, to them by the said Henry A. Willard in hand paid, the receipt of which they do hereby acknowledged, have granted, bargained, sold, assigned, transferred, set over, released, and confirmed, and doth hereby grant, bargain, sell, release, assign, transfer, set over, and confirm, to the said Henry A. Willard, his heirs and assigns, all of square numbered one hundred and fifty-one (151) in the city of Washington, as the said square is laid down on the plat and marked, designated, and known on the grown plan of said city, together with all and singular the
300 buildings and appurtenances thereto belonging or in anywise appertaining, and the reversions, remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand of the said Alexander J. Perry, at law and in equity, in and to the same and to every part and parcel thereof; to have and to hold all and singular the hereinbefore-granted premises and every part and parcel thereof to, unto, and to the use of the said Henry A. Willard, his heirs and assigns; and the said Alexander J. Perry, for himself, his heirs, executors, and administrators, doth hereby covenant, grant, and agree to and with the said Henry A. Willard, his heirs and assigns, in manner and form following, to wit: That he, the said Alexander J. Perry, and his heirs shall and will, by these presents, warrant and defend the said piece of ground and all and singular the premises hereinbefore bargained, sold, and conveyed or meant and intended so to be unto the said Henry A. Willard, his heirs and assigns, against him, the said Alexander J. Perry, his heirs and assigns, and all and every person and
301 persons lawfully claiming or to claim the same or any part thereof by, through, or under him, them, or any of them; and also that he, the said Alexander J. Perry, and his heirs shall and will, at any and all times hereafter, at the request and cost of the said Henry A. Willard, his heirs and assigns, make, execute, acknowledge, and deliver any and every other deed of assurance in law for the more sure and effectual conveyance and assurance of the said hereinbefore-granted premises, with their appurtenances, to the said Henry A. Willard, his heirs and assigns, that he or they or their counsel learned in the law may devise, advise, and require.

In testimony whereof the said Alexander J. Perry and Josephine A., his wife, have hereto set their hands and seals the day and year hereinbefore first written.

ALEX. J. PERRY. [SEAL.]
JOSEPHINE A. PERRY. [SEAL.]

[Rev. stamps, $18.]

Signed, sealed, and delivered in the presence of—
CH'S McNAMEE.

302 DISTRICT OF COLUMBIA, *County of Washington,* } *To wit:*

I, Charles McNamee, a notary public, duly appointed in and for the county of Washington, in the District of Columbia, do hereby

certify that Alexander J. Perry, a party to a certain deed bearing date on the second day of April, A. D. 1868, and hereunto annexed, personally appeared before me, in my county aforesaid, the said Alexander J. Perry being personally well known to me as the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and official seal this second day of April, A. D. 1868.

[SEAL AFFIXED.] CHAS. McNAMEE,
Notary Public.

DISTRICT OF COLUMBIA,
County of Washington, } *To wit:*

I, Charles McNamee, a notary public, duly appointed in and for the county of Washington, in the District of Columbia, do hereby certify that Josephine A. Perry, wife of Alexander J. Perry, a
303 party to a certain deed bearing date on the second day of April, A. D. 1868, and hereto annexed, personally appeared before me, in my county aforesaid, the said Josephine A. Perry being personally well known to me as the person who executed the said deed, and being by me examined privily and apart from her husband, and having the deed aforesaid fully explained to her by me, she, the said Josephine A. Perry, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under my hand and official seal this second day of April, A. D. 1868.

[SEAL AFFIXED.] CHAS. McNAMEE,
Notary Public.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber E. C. E. No. 31, folio 344 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., November 14th, 1885.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

304 COMPLAINANT'S EXHIBIT H.

Copy.

Liber No. 697, folio 122 *et seq.* Stamp-, $24.

Henry A. Willard *et ux.* to James M. Latta. } Deed. Recorded Oct. 2nd, 1872, 3 p. m.

This indenture, made this fourth day of June, in the year of our Lord one thousand eight hundred and seventy-two, between Henry A. Willard and Sarah B. Willard, his wife, of the city of Washington, in the District of Columbia, of the first part, and James M. Latta, trustee, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of twenty-three thousand eight hundred and sixty-four dollars and seventy-five cents ($23,864.75) in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, and sell, alien-, enfeoff, release, and convey,
unto the said party of the second part, his heirs and assigns
305 forever, the following-described real estate situate in the city of Washington, District of Columbia, to wit: All of Willard's recorded subdivision of square numbered one hundred and fifty-one (151), excepting lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), twenty (20), twenty-one (21), twenty-two (22), twenty-five (25), and twenty-six (26), being lots seventeen (17), eighteen (18), nineteen (19), twenty-three (23), twenty-four (24), and twenty-seven (27) to one hundred and forty-nine (149), both inclusive, together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand, either at law or in equity or otherwise however, of the said parties of the first part of, in, to, or out of the said pieces or parcels of ground and premises; to have
and to hold the said pieces or parcels of ground and prem-
306 ises and appurtenances unto and to the use of the said party of the second part, his heirs and assigns, in and upon the trusts and for the purposes particularly set forth in a printed paper bearing even date with these presents and signed and sealed by the said party of the second part, with full power, however, in the said party of the second part to sell and convey said property in fee simple or by way of mortgage or deed of trust to secure payment on money at such time and place, for such sums of money, upon such terms, and in such manner as in his judgment may be proper without any liability on the part of the purchaser or mortgagee to see to the application of the purchase-money or money advanced on mortgage or deed of trust as aforesaid; and the said Henry A. Willard, for himself, his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that they, the said parties of the first part, and their heirs shall and will warrant and forever defend the said pieces or parcels of ground and premises
and appurtenances unto the said party of the second part, his
307 heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof by, from, under, or through him, them, or any of them; and, further, that they, the said parties of the first part, and their heirs shall and will at any and at all times hereafter, upon the request and — the cost of the said party of the second part, his heirs or assigns, make and execute all such other deed or deeds or other assurance in law for

the more certain and effectual conveyance of the said pieces or parcels of ground and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or their counsel learned in the law shall advise, devise, or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

H. A. WILLARD. [SEAL.]
SARAH B. WILLARD. [SEAL.]

Signed, sealed, and delivered in the presence of—
N. CALLAN.

308 DISTRICT OF COLUMBIA, } *ss:*
County of Washington, }

I, Nich's Callan, a notary public in and for the county aforesaid, in the said District, do hereby certify that Henry A. Willard and Sarah B. Willard, his wife, parties to a certain deed bearing date on the 4th day of June, A. D. 1872, and hereto annexed, personally appeared before me, in the District aforesaid, the said Henry A. Willard and Sarah B. Willard, his wife, being personally well known to me to be the persons who executed the said deed, and acknowledged the same to be their act and deed; and the said Sarah B. Willard, wife of the said Henry A. Willard, being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same and that she wishes not to retract it.

Given under my hand and notarial seal this eighth day of June, A. D. 1872.

[NOTARIAL SEAL.] N. CALLAN,
Notary Public.

309 Endorsement.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 697, folio 122 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., November 14th, 1885.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

310 "COMPLAINANT'S EXHIBIT J."

Copy.

Liber No. 679, folio 413 *et seq.* Stamp, $19.

James M. Latta to M. F. Morris *et al.* } Trust. Recorded June 15th, 1872, 2 p. m.

This indenture, made this fourth day of June, in the year of our

Lord one thousand eight hundred and seventy-two, between James M. Latta, trustee, of the city of Washington, in the District of Columbia, of the first part, and M. F. Morris and Hallet Kilbourn, of the city of Washington, D. C., of the second part:

Whereas James M. Latta, trustee, is justly indebted unto Henry A. Willard in the sum of eighteen thousand eight hundred and sixty-four $\frac{16}{100}$ dollars, for which he has executed and delivered to the said Willard one promissory note, dated June 4th, 1872, and payable in five years after date, said note being given to secure the payment of part of the purchase-money of the lots hereinafter described, with interest at the rate of six per centum per annum, payable semi-annually, and being desirous to secure the punctual payment of said note when and as the same shall (respectively)
311 become due and payable, with all interest and costs due and accruing thereon, doth therefore execute these presents:

Now, therefore, this indenture witnesseth that the said party of the first part, for and in consideration of the premises aforesaid and, further, the sum of one dollar in lawful money of the United States to him in hand paid by the said parties of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and does by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the parties of the second part, their heirs and assigns, the following-described real estate, situate in the city of Washington, District of Columbia, to wit: All of Willard's recorded subdivision of square numbered one hundred and fifty-one (151) excepting lots one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), twenty (20), twenty-one (21), twenty-two (22), twenty-five (25), and twenty-six (26), being lots
312 seventeen, eighteen, nineteen, twenty-three, twenty-four, and twenty-seven to one hundred and forty-nine (both inclusive), together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging or in anywise appertaining, and all the estate, right, title, interest, and claim whatsoever, whether at law or in equity, of the said party of the first part of, in, to, or out of the said pieces or parcels of land and premises; to have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto and to the use of the said parties of the second part, their heirs and assigns, in and upon the trusts, nevertheless, hereinafter mentioned and declared—that is, in trust to permit the said James M. Latta, trustee, his heirs or assigns, to use and occupy the said described premises and the rents, issues, and profits thereof; to take, have, and apply to and for his and their sole use and benefit until default be made in the payment of said note or any instalment of interest due thereon or any proper
313 cost, charge, commission, half commission, or expense in and about the same; and, upon the full payment of all of said note and the interest thereon and all other proper costs, charges, commissions, half commissions, and expenses at any time before the sale

hereinafter provided for, to release and reconvey the said described premises unto the said James M. Latta, trustee, his heirs or assigns, at his or their cost; and upon this further trust, that upon default being made in the payment of the said note or any instalment of interest due thereon or any proper cost, charge, commission, half commission, or expense in and about the same, then and at any time thereafter to sell the said piece or parcel of land and premises at public auction, in front of the premises, after at least 20 days' notice of the time, place, and terms of sale by advertisement in some one or more of the newspapers printed and published in the said city of Washington, which said terms of sale shall be as follows, viz., twenty-five hundred in cash and the balance *at* on the 4th day of June, 1877, *months* for which the notes
314 of the purchaser, bearing interest at the rate of six per centum per annum from the day of sale and secured by a deed of trust on the property sold, shall be taken. A deposit of one thousand dollars shall be required of the purchaser at the time of sale, and all conveyancing and revenue stamps shall be at the expense of the purchaser. And upon this further trust: Upon full compliance with the terms of sale, to convey the property sold in fee simple to the purchaser or purchasers thereof at his, her, or their cost and expense, and, without any liability, to see to the application of the purchase-money, and — of the proceeds of said sale or sales—first, to pay all proper costs, charges, and expenses, and to retain as compensation a commission of five per cent. on the amount of said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the interest thereon to the time of said sale, whether the same shall be due or not; and, lastly, to pay the remainder, if any, to said James M. Latta, trustee, his heirs or assigns

In testimony whereof the said party of the first — has
315 hereunto set his hand and seal on the day and year first hereinbefore written.

JAMES M. LATTA, *Trustee.* [L. S.]

Signed, sealed, and delivered in the presence of, having first been duly stamped—

J. F. OLMSTEAD.

DISTRICT OF COLUMBIA,
County of Washington, } ss:

I, J. F. Olmstead, a notary public in and for the county aforesaid, do hereby certify that James M. Latta, trustee, party to a certain deed bearing date on the 4th day of June, A. D. 1872, and hereto annexed, personally appeared before me, — the county aforesaid, the said James M. Latta, trustee, being personally known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this 4th day of June, A. D. 1872.

[NOTARIAL SEAL.]

J. F. OLMSTEAD,
Notary Public.

316 Indorsement.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 679, folio 413 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., November 14th, 1885.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

317 "COMPLAINANT'S EXHIBIT K."

Copy.

Liber No. 925, folio 434 *et seq.*

M. F. Morris *et al.* to Noah L. Jeffries. } Deed. Recorded November 7th, 1879, 11.20 a. m.

Whereas, default having been made in the payment of the indebtedness mentioned in the deed of trust from James M. Latta, trustee, bearing date the fourth day of June, A. D. 1872, and recorded in Liber No. 679, folio 413 *et seq.*, one of the land records for the District of Columbia, M. F. Morris and Hallet Kilbourn, the trustees named in said deed of trust, in strict execution of the powers in them vested in and by said deed, and after having fully complied with all the requirements of said deed, did, on the first day of October, A. D. 1877, expose to public sale, in front of the premises, the land and parcels of ground hereinafter particularly described, with the improvements thereon, at which said sale one N. L. Jeffries, trustee, being the highest and best bidder therefore, became the purchaser of said land and premises at and for
318 the sum of twenty thousand three hundred and sixty dollars and forty-eight — ($20,360.48); and whereas the said Noah L. Jeffries, trustee for Thomas Sunderland and Curtis J. Hillyer, according to the respective interests, having fully complied with the terms of said sale and paid the said purchase-money, hath become entitled to a conveyance of the land and premises so as aforesaid sold:

Now, therefore, this indenture, made this first day of October, in the year of our Lord one thousand eight hundred and seventy-seven, between M. F. Morris and Hallett Kilbourn, trustees, of Washington city, D. C., parties of the first part, and Noah L. Jeffries, trustee for Thomas Sunderland and Curtis J. Hillyer, according to their respective interests, witnesseth:

That the said parties of the first part, for and in consideration of the sum of twenty thousand three hundred and sixty and $\frac{48}{100}$ dollars, current money of the United States, to them in hand paid by the said party of the second part, the receipt of which before the ensealing and delivery of these presents is hereby acknowl-
319 edged, have granted, bargained and sold, aliened, conveyed, and confirmed, and by these presents do grant, bargain, *bargain*, and sell, alien, enfeoff, convey, and confirm, unto and to the

use of the said Noah L. Jeffries, trustee, his heirs or assigns, all those certain pieces or parcels of land and premises situate and being in the city of Washington, District of Columbia, and known and distinguished as lots numbered seventeen (17), eighteen (18), nineteen (19), twenty-three (23), twenty-four (24), twenty-seven (27), and all those lots numbered from twenty-eight (28) to one hundred and forty-nine (149), both inclusive, in Willard's recorded subdivision of square numbered one hundred and fifty-one (151), with the appurtenances, together with the rights, easements, privileges, and appurtenances to the same belonging or in anywise thereto appertaining:

To have and to hold the said land and premises, with the appurtenances and hereditaments to the same belonging, unto and to the only use and benefit of said Noah L. Jeffries, trustee, his heirs and assigns.

In testimony whereof the said parties of the first part have
320 hereunto set their hands and seals on the day and year first hereinbefore written.

M. F. MORRIS, *Trustee.* [SEAL.]
HALLET KILBOURN, *Trustee.* [SEAL.]

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

I, John F. Olmstead, a notary public in and for the county aforesaid, in the said District, do hereby certify that M. F. Morris and Hallet Kilbourn, trustees, parties to a certain deed bearing date on the first day of October, A. D. 1877, and hereto annexed, personally appeared before me, in the county aforesaid, the said M. F. Morris and Hallet Kilbourn, trustees, being personally well known to me to be the persons who executed the said deed, — acknowledged the same to be their act and deed.

Given under my hand and notarial seal this sixth day of October, A. D. 1877.

J. F. OLMSTEAD,
Notary Public.

[NOTARIAL SEAL.]

Indorsement.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 925, folio 434 *et seq.*, one of the land record- for the District of Columbia.

Washington, D. C., November 14th, 1885.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

321 "COMPLAINANT'S EXHIBIT L."

Copy.

Liber No. 965, folio 299 *et seq.*

Noah L. Jeffries, Tr., to John B. Alley. } Deed. Recorded March 23rd, 1881, 1.30 p. m.

Whereas by a certain indenture of deed bearing date on the first day of October, A. D. 1877, and recorded on the seventh day of November, A. D, 1879, in Liber 925, folio 434 *et seq.*, one of the land records of the District of Columbia, the land and premises hereinafter described were duly conveyed by M. F. Morris and Hallet Kilbourn, trustess, to Noah L. Jeffries, trustees, for Thomas Sunderland and Curtis J. Hillyer, according to their respective interests; and whereas the said Thomas Sunderland and his wife, by their deed bearing date on the twenty-sixth day of January, A. D. 1881, and duly recorded on the thirty-first day of January, A. D. 1881, in Liber 957, folio 275 *et seq.*, of the aforesaid land records, did convey the said hereinafter-described land and premises unto John B. Alley, of the city of Lynn, in the State of Massachusetts:

Now, therefore, this indenture, made this twenty-fourth day
322 of February, in the year of our Lord eighteen hundred and eighty-one, by and between Noah L. Jeffries, trustee, of the city of Washington, in the District of Columbia, of the first part, and John B. Alley, of the city of Lynn, in the State of Massachusetts, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of one dollar, in lawful money of the United States of America, to him in hand paid by the said party of the second part at and before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, quitclaimed, released, conveyed, and confirmed, and by these presents doth grant, bargain, sell, quitclaim, release, convey, and confirm, unto the said party of the second part, his heirs and assigns forever, the following-described real estate situate in the said city of Washington and District of Columbia, and designated on a certain plan a subdivision of square numbered one hundred and fifty-
one (151), known as H. A. Willard's subdivision, of record
323 in the office of the surveyor of the said District, in Liber — of subdivisions, folio —, as lots numbered seventeen (17), eighteen (18), nineteen (19), twenty-three (23), twenty-four (24), twenty-seven (27), twenty-eight (28) to one hundred and forty-nine (149), both inclusive, being the same premises conveyed to the said party of the first part by the said deed of M. F. Morris and Hallet Kilbourn, trustees as aforesaid, together with all the rights, privileges, appurtenances, and hereditaments thereunto belonging or in anywise appertaining, and all the remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatso-

ever, either at law or in equity, of the said party of the first part of, in, or out of the above-described land and premises:

To have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit, and behoof forever.

In testimony whereof the said party of the first part hath
324 hereunto set his hand and seal on this the twenty-fourth day of February, A. D. eighteen hundred and eighty-one.

NOAH L. JEFFRIES, *Trustee.* [SEAL.]

Signed, sealed, and delivered in presence of—
JOHN BULL.

UNITED STATES OF AMERICA, } ss:
District of Columbia, }

I, John Bull, a notary public in and for the District aforesaid, do hereby certify that Noah L. Jeffries, trustee, party to a certain deed bearing date on the twenty-fourth day of February, A. D. 1881, and hereto annexed, personally appeared before me, in the District aforesaid, the said Noah L. Jeffries being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-third day of March, 1881.

JOHN BULL,
[NOTARIAL SEAL.] *Notary Public.*

325 Indorsement.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 965, folio 299 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., January 16th, 1886.

GEO. F. SCHAYER,
[SEAL.] *Dep. Recorder.*

326 "COMPLAINANT'S EXHIBIT M."

Copy.

Liber No. 1085, folio 408 *et seq.*

John B. Alley *et ux.* to William Sharon. } Deed. Recorded June 23rd, 1884, 12.10 p. m.

This indenture, made this eighteenth day of June, in the year of our Lord one thousand eight hundred and eighty-four, by and between John B. Alley and Hannah M. Alley, his wife, both of the city of Lynn, in the State of Massachusetts, of the first part, and William Sharon, of State of Nevada, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of

the sum of five (5) dollars, in lawful money of the United States, to them in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, enfeoffed, released, and conveyed, and do by these presents grant, bargain, sell, alien, enfeoff, release, and convey, unto the said party of the second part, his heirs and assigns forever, the following-described real estate, situate in the city of Washington, in the District of
327 Columbia, viz: Original lots numbered three (3), four (4), five (5), part of six (6), nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), and nineteen (19), in square numbered sixty-seven (67), the aforesaid part of lot numbered six being all of said lot except the west forty (40) feet front by one hundred (100) feet in depth; also original lots numbered two (2), three (3), fifteen (15), and sixteen (16), in square numbered sixty-eight (68); also original lots numbered sixteen (16) and seventeen (17), in square numbered sixty-nine (69); also lots numbered twenty-three (23) to twenty-seven (27), inclusive, and lots numbered thirty-seven (37) to thirty-nine (39), inclusive, in John B. Alley and Harvey L. Page's subdivision of certain lots in square numbered ninety-two (92); also part of original lot numbered nine (9), part of original lot numbered ten (10), and all of lots numbered eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), and twenty-five (25), of Willard's and others recorded subdivision of lots numbered six (6), seven (7), eight (8), eleven (11), and parts
328 of nine (9) and twelve (12), in square numbered ninety-seven (97), the aforesaid part of original lot numbered nine being bounded and described as follows, viz: Beginning at the northeast corner of said lot and running thence west on "O" street thirty-three feet and four inches ($33\frac{4}{12}$); thence south one hundred and four feet and eighty-seven one-hundredths of a foot ($104\frac{87}{100}$ ft.); thence northeasterly thirty-eight (38) feet to the dividing line of lots nine and ten, and thence north eighty-six feet and six inches ($86\frac{6}{12}$ ft.) to the place of beginning; and the aforesaid part of original lot numbered ten (10) is bounded and described as follows, viz: Beginning eighty-six feet nine inches ($86\frac{9}{12}$ ft.) south from the northeast corner of said square numbered ninety-seven (97), and running thence north along the westerly line of Twentieth street west forty-two (42) feet; thence west one hundred and seven feet six inches ($107\frac{6}{12}$ ft.) to the west line of said lot; then south along said west line forty-two (42) feet, and thence east one hundred and seven feet six inches ($107\frac{6}{12}$ ft.) to the place of beginning; also all of Wil-
329 lard's recorded subdivision of square numbered one hundred and fifty-one (151), excepting lots one (1) to sixteen (16), inclusive, twenty (20), twenty-one (21), twenty-two (22), twenty-five (25), and twenty-six (26), the lots hereby intended to be conveyed being lots numbered seventeen (17), eighteen (18), nineteen (19), twenty-three (23), twenty-four (24), and twenty-seven (27) to one hundred and forty-nine (149), both inclusive; also all of square numbered one hundred and fifty-three (153); also lots numbered thirty-five (35) to fifty-eight (58), inclusive, and lots numbered sixty-

eight (68) to one hundred and sixty-three (163), inclusive, of John B. Alley's subdivision of lot numbered thirty-three (33) of James M. Latta's trustee's subdivision of square numbered one hundred and fifty-six (156); also the east forty-two (42) feet of lot ten (10) and all of lot numbered seventeen (17), in square numbered one hundred and fifty-eight (158); also lots lettered "E" and "F" of Clark's recorded subdivision of square numbered one hundred and seventy-seven (177), together with all the im-
330 provements, ways, easements, rights, privileges, appurtenances and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, and profits thereof and all the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said parties of the first part of, in, to, or out of the said pieces or parcels of land and premises:

To have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his sole use, benefit, and behoof forever; and the said parties of the first part, for themselves and for their heirs, executors, and administrators, do hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that the said parties of the first part and their heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs and assigns, from and against
331 the claims of all persons claiming or to claim the same or any thereof by, from, under, or through the said parties of the first part or either of them, but against none others; and further that they, the said parties of the first part and their heirs, shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heir- or assigns, or his or their counsel learned in the law shall advise, devise, or require.

In testimony whereof the said parties of the first part have hereunto set their hands and seals on the day and year first hereinbefore written.

JOHN B. ALLEY. [SEAL.]
HANNAH M. ALLEY. [SEAL.]

332 Signed, sealed, and delivered in the presence of—

T. FISHER CLARK.
EDWARD J. STELLWAGEN.
FRANK N. MUDGE,
Witness to Hannah M. Alley.

DISTRICT OF COLUMBIA, ss:

I, Edward J. Stellwager, a notary public in and for the District aforesaid, do hereby certify that John B. Alley, party to a certain deed bearing date on the eighteenth day of June, A. D., 1884, and hereunto annexed, personally appeared before me, in the District aforesaid, the said John B. Alley being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this nineteenth day of June, A. D. 1884.

[NOTARIAL SEAL.] EDWARD J. STELLWAGEN,
Notary Public, D. C.

333 STATE OF MASSACHUSETTS, *County of Essex*, } ss:

I, Frank N. Mudge, a notary public in and for the county aforesaid, do hereby certify that Hannah M. Alley, wife of John B. Alley, party to a certain deed bearing date on the eighteenth day of June, A. D. 1884, and hereunto annexed, personally appeared before me, in the State and county aforesaid, the said Hannah M. Alley being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed; and the said Hannah M. Alley, wife of John B. Alley, being of full age and being by me examined privily and apart from her husband and having the deed aforesaid fully explained to her, acknowledged the same to be her act and deed, and declared that she had willingly signed, sealed, and delivered the same and that she wished not to retract it.

Given under my hand and notarial seal this twenty-first day of June, A. D. 1884.

[NOTARIAL SEAL.] FRANK N. MUDGE,
Notary Public.

COMMONWEALTH OF MASSACHUSETTS:

SECRETARY'S OFFICE, BOSTON, *June 21st*, 1884.

334 I hereby certify that at the date of the attestation hereto annexed Frank N. Mudge was a notary public for the county of Essex, in the said Commonwealth, duly commissioned and constituted, and that to his acts and attestations as such full faith and credit are and ought to be given in and out of court.

In testimony of which I have hereunto affixed the seal of the Commonwealth the date first above written.

HENRY B. PIERCE,
[STATE SEAL.] *Secretary of the Commonwealth.*

Indorsement.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 1085, folio 408 *et seq.*, one of the land records for the District of Columbia.

Washington, D. C., November 14th, 1885.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

335 "COMPLAINANT'S EXHIBIT N."

Liber No. 1086, folio 475 *et seq.*

William Sharon to Thomas J. Fisher. } Deed. Recorded June 25, 1884, 2.40 p. m.

This indenture, made 24th day of June, in the year of our Lord one thousand eight hundred & eighty-four, by and between William Sharon, of the State of Nevada (unmarried), of the first part, and Thomas J. Fisher, of the District of Columbia, party of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of ten (10) dollars, in lawful money of the United States, to him in hand paid by the said party of the second part at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, *have* granted, bargained, sold, aliened, enfoelfed, released, and conveyed, and do- by these presents grant, bargain, sell, alien-, enfoeff, release, & convey, unto the said party of the second part, his heirs and assigns forever, the following-described real estate, situate in the city of Washington, District of Columbia, to wit:

All those certain pieces or parcels of land & premises known
336 and distinguished as and being parts of square numbered one hundred and fifty-three (153) contained within the following metes and bounds, viz: Beginning at the southeast corner of said square, running thence northeasterly on and with the line of New Hampshire avenue two hundred and seventy-eight and $\frac{64}{100}$ (278.64) feet, thence due west to the east line of Eighteenth (18) street, thence due south on and with the line of Eighteenth street two hundred and twenty-five (225) feet to the north line of "R" street, and thence due east on and with the north line of R street one hundred and ninety-eight and $\frac{42}{100}$ (198.42) feet to the west line of New Hampshire avenue, the place of beginning; also the following portion of said square numbered one hundred and fifty-three (153) viz: Beginning at a point on the east line of Eighteenth street distant one hundred and one (101) feet south from the northwest corner of said square, running thence south one hundred and twenty-four (124) feet, thence east eighty-five (85) feet, thence north one hundred and twenty-four (124) feet, and thence west
eighty-five (85) feet to the beginning; also lots seventeen
337 (17), eighteen (18), nineteen (19), twenty-three (23), and twenty-four (24), twenty-seven (27) to forty-five (45), both inclusive, in H. A. Willard's recorded subdivision of square numbered one hundred and fifty-one (151)—

Together with all the improvements, ways, easements, rights, privileges, appurtenances, and hereditaments to the same belonging or in anywise appertaining, and all the remainders, reversions, rents, issues, and profits thereof, and *and* the estate, right, title, interest, claim, and demand whatsoever, either at law or in equity, of the said party of the first part of, in, to, or out of the said pieces or

parcels of land or premises; to have and to hold the said pieces or parcels of land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their sole use, benefit, and behoof forever; and the said party of the first part, for himself and for his heirs, executors, and administrators, does hereby covenant, promise, and agree to and with the said party of the second part, his heirs and assigns, that he, the
338 said party of the first part, and his heirs shall and will warrant and forever defend the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs and assigns, from and against the claims of all persons claiming or to claim the same or any part thereof by, from, under, or through him, the said party of the first part; and, further, that he, the said party of the first part, and his heirs shall and will at any and at all times hereafter, upon the request and at the cost of the said party of the second part, his heirs or assigns, make, execute, deliver, and acknowledge all such other deed or deeds or other assurance in law for the more certain and effectual conveyance of the said pieces or parcels of land and premises and appurtenances unto the said party of the second part, his heirs or assigns, as the said party of the second part, his heirs or assigns, or his or their counsel learned in the law shall advise, devise, or require.

In testimony whereof the said party of the first part *have*
339 hereunto set his hand and seal on the day and year first hereinbefore written.

WM. SHARON. [SEAL.]

Signed, sealed, and delivered in the presence of—
T. FISHER CLARK.
EDWARD J. STELLWAGEN.

DISTRICT OF COLUMBIA, *ss:*

I, Edward J. Stellwagen, a notary public in and for the District aforesaid, do hereby certify that William Sharon (unmarried), party to a certain deed bearing date on the twenty-fourth day of June, A. D. 1884, and hereunto annexed, personally appeared before me, in the District aforesaid, the said William Sharon being personally well known to me to be the person who executed the said deed, and acknowledged the same to be his act and deed.

Given under my hand and notarial seal this twenty-fourth day of June, A. D. 1884.

[NOTARIAL SEAL.] EDWARD J. STELLWAGEN,
Notary Public, D. C.

340 Endorsement.

This is to certify that the within is a true and verified copy of a deed as recorded in Liber No. 1086, folio 475 *et seq.*, one of the land records of the District of Columbia.

Washington, D. C., January 16th, 1886.

GEO. F. SCHAYER,
[RECORDER'S SEAL.] *Dep. Recorder.*

341 JANUARY 20TH, 1886—1 o'clock p. m.

Met pursuant to adjournment.

Present: Messrs. Hillyer & Ralston for complainants, and Mr. Davidson on behalf of defendants.

Whereupon solicitors for complainant offered in evidence a certified copy of Joseph Abbott's last will and testament, which is herewith filed and marked "Complainant's Exhibit O."

Also the solicitors for complainant offer in evidence a certified copy of the last will and testament of Thomas Tudor Tucker, which is herewith filed and marked "Complainant's Exhibit P."

The tax deed attached to the bill in this cause is also here offered in evidence and asked to be read and considered as a part of this testimony.

Adjourned subject to notice.

L. CABELL WILLIAMSON,
Examiner in Chancery.

March 23rd, 1886.—Messrs. Hillyer & Ralston here announce their testimony closed.

L. CABELL WILLIAMSON,
Examiner in Chancery.

342 "COMPLAINANT'S EXHIBIT O."

In the name of God amen.

I, Joseph Abbott being of sound and disposing mind, memory and understanding do make and publish this my last will and testament in manner and form following.

After the payment of my debts, obligations funereal expenses and the legacy hereinafter bequeathed, I devise and bequeath to my wife Elizabeth E. Abbott for and during her natural life all my estate real, personal and mixed with full power to sell and convey in fee simple the following parcels of unimproved land situated in the city of Washington District of Columbia to wit, square numbered one hundred and fifty-one (151). All that part of square numbered two hundred and five (205) which I now own and lot numbered three (3) in square numbered two hundred and twenty-six (226) whenever she shall think it necessary or proper so to do. The proceeds of such sale or sales after the payment of my debts obligations funeral expenses and the legacy hereinafter bequeathed to be invested by her in such manner as she shall think most advantageous—my
343 said wife to have and enjoy the income from such investments during her natural life.

I give and bequeath to my son-in-law Ferdinand Butler one hundred and fifty dollars with which to purchase a gold watch as a gift from me.

I give devise and bequeath all the rest and residue of my estate real personal and mixed, after the death of my said wife in manner following.

I give and devise to my adopted daughter Kate Abbott for and during her natural life my house and lot on F street north between

13th street west and 14th street west in said city of Washington the same being part of lot numbered eighteen (18) in square numbered two hundred and fifty-four (254) with the improvements.

I give and devise to my son Richard Abbott for and during his natural life my two brick houses and the lot on which they are built situate at the corner of G. street north and 13th west in said city of Washington the same being lot numbered one (1) of square numbered two hundred and fifty-two (252) with the im-
344 provements except the west part fronting fifteen feet on G. street heretofore sold by me, and the west part of lot numbered two (2) in square numbered two hundred and twenty-six (226) in said city. The same having a front of twenty-three feet six inches on E. street and extending back that width to the rear of said lot with the improvements, and also after the death of my said adopted daughter Kate the house and lot on F. street which I have hereinbefore devised to her for life.

I give and devise to my grand-daughter Mary Elizabeth Butler and her heirs lot numbered one (1) in square numbered two hundred and twenty-six (226) in said city with the improvements thereon and also the adjoining part of lot numbered two (2) in said square the same having a front on E. street of nineteen feet and extending back that width to the rear of said lot.

I devise and bequeath to my said son Richard and said grand-daughter Mary Elizabeth and their heirs as tenants in common all my unimproved land which shall remain unsold at the death of my said wife, I give and bequeath to my said son and grand-
345 daughter share and share alike all my personal estate and the proceeds of sales of my unimproved land which shall not have been expended by my said wife in the payment of my debts obligations, funeral expenses and the legacy hereinbefore bequeathed.

If my said son Richard shall die leaving a child or children living at his death, I give and devise to such child or children and their heirs as tenants in common all the real estate hereinbefore devised to my said son for life. And if my said son shall have any child which shall die leaving a child or children, then such child or children of a deceased child living at the death of my said son shall stand in its or their parents place and stead and have the same share and interest in said real estate its or their parent would have been entitled to if then living. But if my said son shall die without leaving issue living at his death then I give and devise the real estate hereinbefore devised to my said son for life, to my said grand-daughter and her heirs, and if my said grand-daughter shall
346 die without leaving issue living at her death, then I give and devise said lot numbered one (1) in square numbered two hundred and twenty-six (226) and the adjoining part of lot numbered two in said square hereinbefore devised to her to my said son Richard and his heirs—And if my said son and said grand-daughter shall both die in the lifetime of my said wife without leaving issue living at their deaths respectively, then I give and devise to my said wife and her heirs all said real estate hereinbefore devised to my

said son for life, and said lot numbered one (1) in square numbered two hundred and twenty-six (226) and said adjoining part of lot numbered two (2) in said square hereinbefore devised to my said grand-daughter.

Lastly, I do hereby constitute and appoint my said wife sole executrix of this my last will and testament hereby revoking and annulling all wills by me heretofore made ratifying and confirming this and none other to be my last will and testament.

In testimony whereof, I have hereunto set my hand and
347 affixed my seal on this twenty-third day of March in the year one thousand eight hundred and sixty-one (A. D. 1861).

JOSEPH ABBOTT. [SEAL.]

Signed, sealed, published, and declared by Joseph Abbott, the above named testator, as and for his last will and testament, in our presence, who, at his request, in his presence and in the presence of each other, have subscribed our names as witnesses thereto.

B. W. REED.
THOMAS A. McLAUGHLIN.
W. J. STONE, JUN'R.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

APRIL 8TH, 1861.

This day appeared Bushrod W. Reed, Thomas A. McLaughlin, and William J. Stone, Jun'r, the three subscribing witnesses to the aforegoing last will and testament of Joseph Abbott, late of Washington county aforesaid, deceased, and severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign and seal this will; that he published, pronounced,
348 and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehensions, of sound and disposing mind, memory, and understanding, and that they respectively subscribed their names as witnesses to this will in the presence and at the request of the testator and in the presence of each other.

Sworn before—

ED. N. ROACH,
Reg'r Wills.

Register's Certificate.

Supreme Court of the District of Columbia.

DISTRICT OF COLUMBIA, *To wit:*

OFFICE OF THE REGISTER OF WILLS.

I hereby certify that the aforegoing is a true copy from the original last will and testament of Joseph Abbott, late of the District of Columbia, deceased, filed and recorded in the office of the register of wills for the District of Columbia.

Witness my hand and the seal of the supreme court of the District

of Columbia, special term for orphans' court business, this 15th day of January, A. D. 1886.

[S. C. D. C. SEAL.] H. J. RAMSDELL,
Register of Wills, D. C.

349 "COMPLAINANT'S EXHIBIT P."

The Last Will and Testament of Thomas Tudor Tucker.

Page first. I, Thomas Tudor Tucker of the State of South Carolina, at present residing in the city of Washington, being of sound mind, do make this my last will and testament as follows, hereby revoking and annulling all former wills that I may have made.

Clause first. I desire that all my just debts may be faithfully and promptly paid and all obligations that I may have signed be strictly fulfilled. My debts at present are very few and of small amount and it is my desire not to increase them without some special inducement. Among my written obligations (perhaps the only one of much consequence) is an acknowledgement to my beloved sisters Francis Tucker widow of Henry Tucker, Esquire, and Elizabeth Tucker, both residing in Bermuda, that I hold in trust for them one hundred and twenty-two shares in the Philadelphia Insurance Company in the city of Philadelphia standing in my name on the books of that institution which shares are the property of my
350 said sisters, of which sixty-one shares are the property of my sister Frances and the remaining sixty-one shares are the property of my sister Elizabeth. The reason of their being held in my name is that the charter does not admit of their being held in the name of any but a citizen of the United States. My desire is that the said shares be confirmed to my said sisters respectively or their lawful representatives in any manner that may direct, sixty-one shares to each, and be transferred to such persons as they may approve, or sold for their sole benefit respectively—and until they shall be satisfactorily transferred any dividends that may accrue thereon must be immediately paid to their respective orders.

Clause second. I give and bequeath to my beloved sister Francis before mentioned the sum of ten thousand dollars to be paid in Philadelphia as all other sums herein bequeathed are desired to be paid, unless the parties concurred should otherwise agree, as soon as conveniently may be, and if she should not survive me, I give the said sum to be equally divided amongst her children, count-
351 ing for a child the child or children of a deceased child, as in this instance the child or children of her son John Tucker and those of her deceased daughter Elizabeth both of whom left children— In every such case the surviving paren , if there be one, shall receive the portion of the children and apply it to their benefit.

Clause third. I give and bequeath to my beloved sister Elizabeth before mentioned the sum of ten thousand dollars, and if my said sister should not survive me then the said donation shall be deemed null and void and shall be retained as a part of the residue of my estate to be disposed of as hereafter directed.

Clause fourth. I give and bequeath to my ever kind and beloved brother St. George Tucker of Virginia now residing in Williamsburg the sum of fourteen thousand dollars; or if he should not survive me, I give of that sum two thousand dollars to his dear excellent wife, and the residue I give to be divided equally among his children, counting as one thereof the children of his dear daughter Frances late wife of Judge Coalter, who, as their father, is to receive their portion and divide it equally among them or otherwise
352 apply it to their use as he may deem proper. I also give to my said brother all my books, wearing apparel and other moveables which are few and of too little value to be enumerated.—Many years ago, in the Revolution- war, I received at Charleston for my dear good brother a sum of money which I have never accounted for, and he from delicacy has never mentioned it. I do not recollect the amount or value of it, as paper money was then much depreciated. If he can ascertain the value I request him to pay himself with full interest. If he cannot, I beg him to accept in lieu thereof (if they should remain mine until my demise) a square of lots which I hold in the town of Columbia in South Carolina and another square in the city of Washington, or two thousand dollars, at his option. John Woodrop Esqr of Charleston is my attorney and pays the taxes for the square in Columbia.

Clause fifth. I give and bequeath to each of the sons of my beloved and excellent deceased brother Henry Tucker of Bermuda two thousand dollars and to their amiable sister Ann Neal Lanzun I give three thousand dollars and if either or any of them
353 should die before me leaving a child or children, such child or children shall take the portion intended for the parent. And in every similar case the same rule must be observed.

Clause sixth. I give and bequeath to my nephew John Justus Tucker son of my beloved and excellent brother Nathaniel Tucker physician, who died in England, one thousand dollars; which sum I consider sufficient to put him upon a footing with my other nephews, as I contributed considerably towards the expense of his education for the church, in which he is established.

Clause seventh. I give and bequeath to my beloved niece Frances Tucker daughter of my dear sister Frances two thousand dollars, and to her worthy brother Richard Jennings Tucker one thousand dollars and to my niece-in-law Elizabeth Tucker, widow of my dear nephew John Tucker, or to her children if she should die before me, one thousand dollars, and to the children of my deceased niece Elizabeth Tucker daughter of my sister Frances one thousand dollars, to be received by their father for their use,—also to my dear grand niece Francis daughter of my dear nephew Henry
354 Tucker son of my sister Francis five hundred dollars.

Clause eighth. To my very worthy female friends Sarah Stone, widow of Judge Stone of North Carolina and her sister Margaret G. Daishiell both of them daughters of Mrs. Sarah Willson of Washington, I give and bequeath to each one hundred dollars as a small token of my great respect and regard and recommend them

to the kindness and friendship of my dear brother or
Page second. other surviving friends who may respect my memory.
I also give to my unfortunate friend Aletta Maria Dickinson widow of Gilchrist Dickinson of Bermuda two hundred dollars as a small alleviation of her unhappiness.

Clause ninth. I appoint my dear brother St. George Tucker before mentioned and his two excellent sons Henry St. George Tucker and Nathaniel Beverly Tucker and also his worthy son-in-law Judge Coalter who married my said brother's daughter Frances, long since deceased to be the executors of this my last will and testament, and if any two of them should die before me or decline to act, I desire to add to those who shall act, my esteemed relative George Tucker
now or lately of Lynchburg in Virginia giving them full
355 power to execute all the provisions of this will according to
my intention as they shall understand it, without regarding defects of legal forms, which I have not studied. Whenever I give I mean to make the gift whether of real or personal property as compleat as any form of words can make it. When I designate any person by name or otherwise it is sufficient that I am understood, the omission of any part of the name or any misnomer is not to be regarded. If my property shou-d prove insufficient to pay all the sums which I have devised, all the legacies of not less than one thousand dollars must be reduced in equal proportion so as to bring them within the compass of the assets: and if the property should exceed the sums to be paid the surplus must be divided in like proportion among the legacies of not less than one thousand dollars each, without, in either case altering the smaller legacies. At present there is a sufficiency; but times and circumstances may change.—I give
to each of my nephews named as my executors and to Judge
356 Coalter five hundred dollars as a mark of my regard for them
and their dear children.—If unfortunately it should happen that at the time of my demise, any person or persons entitled by this will to receive a portion of the property herein devised, shall be known to be so involved in pecuniary difficulties that the property so devised might by law be taken for the satisfaction of debts, in every such case the property so devised shall be with-eld from the person so involved and placed in the hands of a trustee or trustees, for the use of the wife, children or other nearest relatives of such person until the embarrassment be removed, and no longer. And in every such case the wife or children (if of lawful age) may designate the person or persons into whose hands the property shall be placed; and when so placed the executors shall no longer be answerable.

And now having fulfilled according to my best judgment and information a last duty to my dear friends, to whom I owe every feeling of gratitude and affection, I proceed to ratify and confirm this will written with my own hand.

357 In witness whereof I have hereunto set my hand and seal
at the city of Washington this twenty-fourth day of October

in the year of our Lord one thousand eight hundred and twenty-four, and of the Independence of the United States the forty-ninth.

TH. T. TUCKER. [SEAL.]

Signed and sealed in the presence of—
THOS. SIM.
R. HARRISON.
WM. STEUBEN SMITH.
GEO. W. DASHIELL.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

ORPHANS' COURT, *July* 11*th*, 1828.

Thomas Sim, Richard Harrison, and George W. Dashiell, three of the subscribing witnesses to the aforegoing last will and testament of Thomas Tudor Tucker, late of Washington county aforesaid, deceased, severally made oath on the Holy Evangels of Almighty God that they did see the testator therein named sign and seal this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of his so doing he was,
358 to the best of their apprehensions, of sound and disposing mind, memory, and understanding, and that they, together with William Steuben Smith, the other subscribing witness, respectively subscribed their names as witnesses to this will in the presence and at the request of the testator and in the presence of each other.

Sworn in open court.
Test:

HENRY C. NEALE,
Reg'r Wills.

Codicil to the Last Will and Testament of Thomas Tudor Tucker.

This is to be taken as a codicil to the last will and testament of Thomas Tudor Tucker bearing date the twenty-fourth day of October eighteen hundred and twenty-four, and to be received and recorded as a part of the same, as fully as if it were inserted therein.

First.—Having the most perfect confidence in each of my executors named in my will, it is my desire that neither of them shall be required to give security for the faithful execution of the trust reposed in them. Moreover, as it is possible that there may be doubts as to the legal construction of some parts of my will,
359 I hereby give full power and authority to my said executors, or any of them that shall act as such, to construe such doubtful expressions according to their opinion of my real intention (disregarding any defects of legal form) and to execute them accordingly—I am sure they will not be at a loss to perceive my meaning and intention. And in any and every such case, no person shall be allowed to controul or dispute their decision.

Second.—On further reflexion I have determined to bequeath to my nephew James Justus Tucker two thousand dollars instead of

one thousand as express-d in the will to which I have alluded. And I hereby give him the said sum of two thousand dollars.

Third.—As it has pleased the Almighty in his wise dispensation, to remove from this world my beloved niece Frances Tucker, to a happier state, as I hope and believe, therefore the legacy intended for her becomes null and void as if it had not been express-d. And whereas my beloved sister Frances has also been removed from this scene of severe trials and suffering to a state of blessedness, the
360 legacy which I have bequeath-d to her, must of course be paid to her executor or other lawful representatives to be distributed according to my first intention, and the sixty-one shares in the Philadelphia insurance which I hold belonging to her must also be paid to her lawf-l representatives according to my first intention.

Fourth.—I give and bequeath to my beloved sister Elizabeth the sum of three thousand dollars in addition to what I have given to her in my will to which this is a codicil. And I desire that provision may be made as early as possible to pay to her order any sum that she may require; and moreover I desire that everything relating to her may be accomp*l*ish-d without unnecessary delay, and without waiting for the execution of any other parts of my will.

Fifth.—Having lately received advices from my esteemed friends Messrs. Elliston and John Perot that the Philadelphia Insurance Company not finding sufficient employment for all their capital have deemed it expedient to repay to the stockholders fifty dollars on each share; I hereby direct that my executors or such of
361 them as qualify shall receive such sum or sums as shall be payable on account of the principal of the one hundred and twenty-two shares held in my name and shall pay over the same to such person or persons as under the provisions of my will would be entitled to the stock itself.

Sixth.—It being my earnest desire that all disputes about my *my* will should be avoided I hereby direct that any doubts which may arise about it, shall, as far as the law will admit be decided by my nephew Henry St. George Tucker if he qualifies as my executor and if he dies or does not qualify then to be decided by such other of my executors as shall qualify and in every such case no person shall be allowed to controul or dispute the decision.

Seventh.—Having since the date of my will paid to my deceased brother St. George in his lifetime the sum mentioned in the fourth clause of my will to have been received for him at Charleston, so much of my said will as relates to the payment thereof to him I hereby revoke.

Eighth.—I hereby declare that by the word property in the
362 ninth and eleventh lines of the ninth clause of my will, I mean real as well as personal property, it being my desire that all my property real and personal constitute a fund for payment of my debts and legacies for which purpose I hereby authorise and empower such of my executors as qualify or the survivors of them to sell and dispose of the same, and to make a title therefor to the purchaser.

The lot in South Carolina I have sold and conveyed since the date of my will.

In testimony whereof I have set my hand and seal to this my codicil to my last will and testament, which codicil, is contained in the two first pages of this sheet; at Washington this 16th day of March 1828.

TH. T. TUCKER. [SEAL.]

Signed sealed published and declared by the testator Thomas Tudor Tucker as and for a codicil to his last will and testament in the presence of us who thereupon subscribed our names as witnesses in his presence and in the presence of each other this 16th of March 1828.

TH. B. DASHIELL.
BENJ. B. BEALL.
JAS. MOORE.

363 DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

On this 11th of July, 1828, Thomas B. Dashiell, one of the subscribing witnesses to the aforegoing codicil to the last will and testament of Thomas Tudor Tucker, late of Washington county, deceased, made oath on the Holy Evangels of Almighty God that he did see the testator therein named sign and seal this codicil; that he published, pronounced, and declared the same to be a codicil to his last will and testament; that at the time of his so doing he was, to the best of his, the deponent's, apprehension, of sound and disposing mind, memory, and understanding, and that he, together with Benjamin B. Beall and James Moore, the other subscribing witnesses, respectively subscribed their names as witnesses to this codicil in the presence and at the request of the testator and in the presence of each other.

Sworn in open court.

Test: HENRY C. NEALE,
Reg'r Wills.

364 DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

The 11th July, 1828, James Moore, one other of the subscribing witnesses to the within and aforegoing codicil to the last will and testament of Thomas Tuder Tucker, late of Washington county aforesaid, deceased, solemnly, sincerely, and truly affirmed that he did see the testator therein named sign and seal this codicil; that he published, pronounced, and declared the same to be a codicil to his last will and testament; that at the time of his so doing he was, to the best of his, the deponent's, apprehension, of sound and disposing mind, memory, and understanding, and that he, together with Thomas B. Dashiell and Benjamin B. Beall, the other subscribing witnesses, respectively subscribed their names as witnesses to this codicil in the presence and at the request of the testator and in the presence of each other.

Test: HENRY C. NEALE,
Reg'r Wills.

365 Supreme Court of the District of Columbia.

OFFICE OF THE REGISTER OF WILLS.

DISTRICT OF COLUMBIA, *To wit:*

I hereby certify that the aforegoing is a true copy from the original last will and testament and codicil of Thomas Tuder Tucker, late of the District of Columbia, deceased, filed and recorded in the office of the register of wills for the District of Columbia.

Witness my hand and the seal of the supreme court of the District of Columbia, special term for orphans' court business, this 16th day of January, A. D. 1886.

[SEAL.] H. J. RAMSDELL,
Register of Wills, D. C.

366 *Decree Dismissing Bill at Compl't's Cost. Filed May* 29, '86.
R. J. Meigs, Clerk.

In the Supreme Court of the District of Columbia, Holding a Special Term. In Equity.

THOMAS J. FISHER
vs.
JOHN R. TUCKER *et al.* } No. 9305.

This cause coming on to be heard on the pleadings and evidence and having been argued by counsel for complainant and defendants and having been considered by the court—

It is this 29th day of May, A. D. 1886, ordered, adjudged, and decreed that the bill in this cause be, and hereby is, dismissed, and that complainant pay all costs in the cause.

And from this decree the complainant in open court prays and is allowed an appeal to the general term.

WM. M. MERRICK, *A. J.*

367 *Undertaking for Appeal to General Term. Filed June* 14, '86.

In the Supreme Court of the District of Columbia, the 7th Day of June, 1886.

THOMAS J. FISHER, Plaintiff,
vs.
J. R. TUCKER *et al.*, Defendants. } No. 9305.

The plaintiff having appealed to the general term from the decree pronounced herein on the 29th of May, A. D. 1886, in the special term equity court and Edward J. Stellwagen, surety for said appeal, for themselves and each of them, their and each of their heirs and personal representatives, appearing and submitting to the jurisdiction of the said general term, hereby undertake to abide by, perform, and pay its judgment which they agree may be pronounced against all of them.

THOS. J. FISHER, *Appellant.*
EDWARD J. STELLWAGEN, *Surety.*

Approved 11th June, 1886.
WM. M. MERRICK.

368 *Decree of Gen'l Term Affirming Decree of Special Term & Allowing Appeal to S. C. U. S.*

In the Supreme Court of the District of Columbia, Sitting in General Term.

THOS. J. FISHER *vs.* J. R. TUCKER *et al.* } Equity. No. 9305, Eq. Doc. 24.

This cause came on to be heard at this term of the court upon the appeal taken by the plaintiff from the decree of this court herein in special term dated June 1, 1886, and was argued by counsel for the respective parties and submitted to the court; and, upon consideration thereof, it is this 10th day of April, A. D. 1888—

Ordered, adjudged, and decreed that the said decree be, and the same is hereby, in all things affirmed with costs; and from this decree the plaintiff, by counsel, appeals in open court to the Supreme Court of the United States, which said appeal is allowed.

E. F. BINGHAM,
Chief Justice.

369 *Bond of Appeal to S. C. U. S. Filed May* 28, 1888.

In the Supreme Court of the District of Columbia, the 12th Day of April, 1888.

THOS. J. FISHER, Complainant, *vs.* J. R. TUCKER *et al.*, Defendants. } No. 9305. In Error.

Know all men by these presents that we, Thomas J. Fisher, as principal, and Edward J. Stellwagen, as surety, are bound unto the above-named J. R. Tucker *et al.*, defendants, in the sum of five hundred ($500.00) dollars, to be paid to the said J. R. Tucker *et al.*, defendants, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 12th day of April, 1888.

Whereas the above-named Thomas J. Fisher, complainant, hath prosecuted his appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Thomas J. Fisher shall prosecute his said appeal to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

THOS. J. FISHER. [SEAL.]
EDWARD J. STELLWAGEN. [SEAL.]

Sealed and delivered in presence of—
JOHN J. MALONE.

Approved.
E. F. BINGHAM, *C. J.*

370 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, R. J. Meigs, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 28th day of September, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by R. J. Meigs, clerk of the said court, to be in due form.

Witness my hand and seal this 28th day of September, 1888.

E. F. BINGHAM, [SEAL.]
Chief Justice.

Clerk's Certificate to Justice's Official Character.

I, R. J. Meigs, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 28th day of September, 1888.

[Seal Supreme Court of the District of Columbia.]

R. J. MEIGS, *Clerk*,
By R. J. MEIGS, JR.,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: Case No. 13275. District of Columbia supreme court. No. 217. Thomas J. Fisher, appellant, *vs.* J. Randolph Tucker *et al.* Filed October 12, 1888.

IN THE

Supreme Court of the United States.

THOMAS J. FISHER, APPELLANT,

vs.

J. RANDOLPH TUCKER ET AL.

No. 13,257. Term No. 217.

[Filed March 8, 1892.]

Now comes Hillyer & Ralston, attorneys for appellant, and show to the court that, pending this appeal Thos. J. Fisher, the original plaintiff and appellant, has died, and that Jessie Adelaide Sunderland has succeeded to all the rights of said Fisher, deceased, in the property involved in this action, and they therefore move the court that the said Jessie Adelaide Sunderland be substituted as plaintiff and appellant therein.

J. H. RALSTON,
Attorney for Appellant.
CURTIS J. HILLYER,
Per J. H. R.,
Attorney for Appellant.

Will of Thomas J. Fisher.

In the Name of God, Amen:

I, THOMAS J. FISHER, of the city of Washington, District of Columbia, do make, publish and declare this to be my last will and testament, hereby revoking all other wills by me at any time heretofore made.

First. It is my will that all my just debts and funeral charges shall be paid by my executors hereinafter named, and as soon after my death as may be practicable.

Second. I give and bequeath to my sisters, Susan Fisher, unmarried, Eliza J. Claxton, widow of A. B. Claxton, Mary C. Appel, wife of Charles A. Appel, and Charlotte M. Scheffer, wife Julius Scheffer, the sum of twenty-five hundred dollars ($2,500.00) each.

Third. I give and bequeath to my grandson, Thomas Fisher, my watch and chain.

Fourth. I give and bequeath to my daughters, Ida M. Gale, Charlotte M. Stellwagen and Bertha V. McKnew all my books, pictures, silver, silver plated ware and set of engraved glass-ware, to be divided among them in such manner and proportion as they themselves may elect and determine.

Fifth. I give, bequeath and devise all the rest and residue of my estate of what kind soever, real and personal, and wheresoever situated, to my executors hereinafter named, to the survivors or survivor of them, their or his heirs, upon the following trusts: that is to say, to divide and apportion the same equally among my children Ida M. Gale, Charlotte M. Stellwagen, Bertha V. McKnew, Louis H. Fisher and Thomas W. Fisher, power being hereby conferred upon my said executors to make sale of the real estate or any part thereof, if such sale should be necessary to effect such a division. Should any of my said children die before such division, leaving lawful issue, or the child or children of such issue, then the said child or children shall take the share of his, her or their deceased parent; and should any of my said children die before said division without leaving such issue, or child or children, then the share of such deceased child shall be equally divided among my surviving children, or their issue, in the event that they or any of them should have died, leaving lawful issue.

It is my will that my said executors shall transfer and convey to my children, Ida M. Gale, Charlotte M. Stellwagen, and Bertha V. McKnew, their said respective shares or interests, absolutely and in fee simple, as soon after my death as may be practicable.

And it is my further will that my said executors shall hold the respective shares of my said sons, Louis H. Fisher and Thomas W. Fisher, for and during the period of not more than twenty years and not less than ten years from the date of my death, according to their judgment and discretion, and shall manage and invest the same (preferably in business real estate), with the power of sale for the purposes of investment, and pay over the income derived therefrom to my said sons, Louis H. Fisher and Thomas W. Fisher, respectively; and in the event that either of them should die, leaving a widow, or child, or children, then to pay said income to such widow, child, or children, and at the expiration of said period to convey their respective share to my said sons, Louis H. Fisher and Thomas W. Fisher, or to the issue of either of them, dying leaving such issue.

Sixth. I hereby nominate, constitute, and appoint Edward Stellwagen, Thomas M. Gale, and George E. Hamilton, the executors of this my last will and testament, and direct that, as far as the law will permit, they be relieved of the obligation of giving bonds for the performance of their duties as executors.

In testimony whereof, I have hereunto set my hand and seal this 26th day of April, A. D. 1888.

[SEAL.] THOMAS J. FISHER.

Signed, sealed, published and declared by the above named testator, Thomas J. Fisher, as and for his last will and testament, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses hereto.

SEIGNELY C. ELLIOTT.
JOHN J. MALONE.
G. CARLYLE WHITING.

SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Holding a Special Term for Orphans' Court business.

NOVEMBER 2nd, 1888.

DISTRICT OF COLUMBIA, *to wit:*

This day appeared Seignelay C. Elliott, John J. Malone and G. Carlyle Whiting, the subscribing witnesses to the foregoing last will and testament of Thomas J. Fisher, late of the District of Columbia, deceased, and severally made oath on the Holy Evangels of Almighty God, that they did see the testator therein named sign this will; that he published, pronounced, and declared the same to be his last will and testament; that at the time of so doing he was, to the best of their apprehension, of sound and disposing mind, and capable of executing a valid deed or contract; and that their names as witnesses to the aforesaid will were signed in the presence and at the request of testator, and in the presence of one another.

Test:

DORSEY CLAGETT,
Register of Wills.

IN THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

Special Term for Orphans' Court Business.

DISTRICT OF COLUMBIA, *to wit:*

I, LEVI P. WRIGHT, Register of Wills for the District of Columbia, and ex-officio Clerk of the said Special Term for Orphans' Court Business, do hereby certify that the foregoing is a true copy of the original will of Thomas J. Fisher, deceased, and the probate thereto, filed and recorded in the office of the Register of Wills for the District of Columbia aforesaid; and also that the said will after having been proven by the said witnesses whose names appear in the foregoing probate, was, by order of the Supreme Court of the District of Columbia, holding a Special Term for Orphans' Court Business, duly admitted to probate and record on the 2nd day of November, A. D. one thousand eight hundred and eighty-eight.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said Supreme Court, Special Term for Orphans' Court Business, this 12th day of March, Anno Domini 1892.

L. P. WRIGHT,

Register of Wills for the District of Columbia and ex-officio Clerk of the said Special Term for Orphans' Court Business.

STELLWAGEN, GALE, HAMILTON,

TO

JESSIE ADELAIDE SUNDERLAND.

[Deed.—Recorded Aug. 6, 1889, 12.15 p. m.]

This Indenture, made this ninth day of July, in the year of our Lord one thousand eight hundred and eighty-nine, by and between Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, all of the city of Washington, in the District of Columbia, executors of the last will and

testament of Thomas J. Fisher, deceased, as parties of the first part, Mary A. Sunderland, widow, of the city of San Francisco, in the State of California, as party of the second part, and Jessie Adelaide Sunderland, of said city of San Francisco, of the third part, Witnesseth: That whereas, heretofore, by a deed bearing date on the 24th day of June, A. D. 1884, and recorded in Liber No. 1086, folio 475 *et seq.* of the Land Records for the District of Columbia, one William Sharon, holding the real estate and premises hereinafter mentioned in trust for one Thomas Sunderland, conveyed the same with the consent of said Thomas Sunderland to Thomas J. Fisher, now deceased, but formerly of said city of Washington, together certain other real estate in said deed mentioned, which said deed was absolute on its face: And whereas the records of proceedings in Equity Cause No. 9228 of the Supreme Court of the District of Columbia, wherein said Thomas J. Fisher is complainant, and William Sharon and others are defendants, discloses the fact that the said William Sharon, the grantor in said deed, held as trustee only, and conveyed said real estate and premises to said grantee, Fisher, in trust for the said Thomas Sunderland: And whereas, subsequently, by a deed bearing date on the 14th day of January, A. D. 1886, and recorded in Liber No. 1160, folio 263 *et seq.* of the Land Records for the District of Columbia, entered into by and between the said Thomas Sunderland and the said Thomas J. Fisher, the said Thomas Sunderland ratified and confirmed all sales previously thereto made by said Thomas J. Fisher of any part or portion of the property so as aforesaid conveyed to him by the said William Sharon, and further authorized and directed the said Thomas J. Fisher to make any further sales which he might deem proper of any portion of said real estate remaining unsold at the time. And whereas, subsequently, on the 9th day of October, A. D. 1886, the said Thomas Sunderland departed this life leaving a last will and testament, executed on the 20th day of August, A. D. 1885, and

duly admitted to probate in the Supreme Court of the District of Columbia, on the 5th day of November, A. D., 1886, whereby he devised and bequeathed all his estate, both real and personal, to his wife, Mary A. Sunderland, the party hereto of of the second part. And whereas, subsequently, on the 26th day of October, A. D., 1888, the said Thomas J. Fisher departed this life leaving a last will and testament executed on the 26th day of April, A. D., 1888, and duly admitted to probate in the Supreme Court of the District of Columbia on the 2d day of November, A. D., 1888, whereby he devised and bequeathed, after certain specific bequests therein, all the rest and residue of his estate, of what kind soever, both real and personal, the real estate hereinafter specified being included therein to Edward J. Stellwagen, Thomas M. Gale, and George E. Hamilton, the executors in said last will and testament named, and to the survivor or survivors of them, their or his heirs, upon certain trusts specified in said last will and testament. And whereas the parties hereto of the first part are advised that by the grant conveyed in the said last will and testament of Thomas J. Fisher, deceased, the title to the real estate and premises hereinafter to be described, and which at the time of his death was in the said Thomas J. Fisher, became vested in the parties hereto of the first part, but only as trustees in the place and stead of said Thomas J. Fisher, for the use and benefit of said Thomas Sunderland, his heirs or assigns, and for the use and benefit of said Mary A. Sunderland as the devisee of said Thomas Sunderland. And whereas the said Mary A. Sunderland has assigned all her right, title, interest, and estate in the premises to her daughter, Jessie Adelaide Sunderland, the party hereto of the third part, as is evidenced by her becoming a party to these presents as party of the second part: And whereas the said Mary A. Sunderland and Jessie Adelaide Sunderland have authorized and requested the parties hereto of the first part to execute these presents: Now, therefore, in consideration of the

premises and of the payment of the sum of ten dollars in lawful money of the United States, by the party of the third part, to the parties of the first part and second part, the receipt whereof is hereby acknowledged, the said Edward J. Stellwagen, Thomas M. Gale and George E. Hamilton, executors as aforesaid, parties of the first part, and the said Mary A. Sunderland, the party of the second part, have given, granted, bargained and sold, released, conveyed and quit claimed and do hereby give, grant, bargain and sell, release, convey and quit claim unto the said Jesse Adelaide Sunderland and her heirs and assigns forever, all those pieces or parcels of land and premises situated in the city of Washington, in the District of Columbia, and known and described as lots of ground numbered seventeen (17), eighteen (18), nineteen (19), twenty-three (23), twenty-four (24), twenty-seven (27), twenty-eight (28), twenty-nine (29), thirty (30), thirty-one (31), thirty-two (32), thirty-three (33), thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), thirty-eight (38), thirty-nine (39), forty (40), forty-one (41), forty-two (42), forty-three (43), forty-four (44), forty-five (45), in square numbered one hundred and fifty-one (151), according to the official plan of said city of Washington and the records of the subdivision of said square in the office of the Surveyor for the District of Columbia, together with improvements, rights, privileges and appurtenances thereto belonging. To have and to hold the said lots of ground and premises with the appurtenances unto and to the use of said party of the third part and her heirs and assigns forever. In testimony whereof, the said parties of the first and second parts have hereto set their hands and seals on the day and year first hereinbefore written.

EDWARD J. STELLWAGEN. [SEAL.]
THOMAS M. GALE. [SEAL.]
GEORGE E. HAMILTON. [SEAL.]
Executors of the last will of Thos. J. Fisher, deceased.
MARY A. SUNDERLAND. [SEAL.]
JESSIE ADELAIDE SUNDERLAND. [SEAL.]

Signed, sealed and delivered by the said Edward J. Stellwagen, Thomas M. Gale and George E. Hamilton, in presence of J. J. Malone.

Signed, sealed and delivered by the said Mary A. Sunderland in the presence of ——

DISTRICT OF COLUMBIA, *County of Washington.* } *to wit:*

I, John J. Malone, a Notary Public in and for the District of Columbia, do hereby certify that Edward J. Stellwagen, Thomas M. Gale and George E. Hamilton, parties to a certain deed bearing date on the 9th day of July, A. D. 1889, and hereto annexed, personally appeared before me in the District aforesaid the said Edward J. Stellwagen, Thomas M. Gale and George E. Hamilton, being personally well known to me to be the persons who executed said deed and acknowledged the same to be their act and deed. Given under my hand and notarial seal this 30th day of July, A. D. 1889.

[NOTARIAL SEAL.] JOHN J. MALONE,
Notary Public, D. C.

STATE OF CALIFORNIA, *City and County of San Francisco.* } *to wit:*

I, Lee D. Craig, a notary public in and for the city and county of San Francisco in the State of California, duly commissioned and appointed, do hereby certify that Mary A. Sunderland, party to a certain deed bearing date on the ninth day of July, A. D. 1889, and hereto annexed, personally appeared before me in the city aforesaid in the said State of California, the said Mary A. Sunderland being personally well known to me to be the person who executed the said deed, and acknowledged the same to be her act and deed.

Given under my hand and notarial seal this 19th day of July, A. D. 1889.

[NOTARIAL SEAL.] LEE D. CRAIG,
Notary Public in and for the City and County of San Francisco, State of California.
No. 316 Montgomery street.

STATE OF CALIFORNIA, }
City and County of San Francisco. } *S. S.:*

I, Wm. A. Davies, county clerk of the city and county of San Francisco, State of California, and ex-officio clerk of the Superior Court thereof, which court is a court of record, having a seal, do hereby certify that Lee D. Craig, whose name is subscribed to the certificate or proof of acknowledgment of the annexed instrument, and thereon written, was at the time of taking such proof or acknowledgment a notary public in and for the said city and county, duly commissioned and qualified and authorized by law to take the same, and full faith and credit are due to all his official acts as such notary, and I do further certify that I am well acquainted with the handwriting of said notary, and verily believe that the signature to the said certificate or proof of ackowledgment genuine, and that said instrument is executed and acknowledged in accordance with the laws of the State of California. In witness whereof, I have hereto set my hand and affixed the seal of said Superior Court at my office in said city and county this 19th day of July, A. D. 1889.

[COURT SEAL.] WM. A. DAVIES,
County Clerk
and ex-officio Clerk of the Superior Court.

Office Supreme Court U. S.
FILED.
JAN 13 1892

IN THE

Supreme Court of the United States

OCTOBER TERM, 1891.

F. W. SHARON AND F. G. NEWLANDS, Trustees, *Plaintiffs and Appellants,*

vs.

J. RANDOLPH TUCKER ET AL., *Defendants.*

No. 13274.

and

THOS. J. FISHER, *Plaintiff and Appellant,*

vs.

SAME DEFENDANTS.

No. 13275.

C. J. HILLYER,
J. H. RALSTON,
Attorneys for Plaintiffs and Appellants.

RAMSEY & BISBEE, PRINTERS AND BINDERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1891.

F. W. SHARON AND F. G. NEWLANDS, Trustees, *Plaintiffs and Appellants,*

vs.

J. RANDOLPH TUCKER ET AL., *Defendants.* — No. 13274.

and

THOS. J. FISHER, *Plaintiff and Appellant,*

vs.

SAME DEFENDANTS. — No. 13275.

STATEMENT.

In 1828 Thomas Tudor Tucker died siezed of the ground in controversy, a portion of square 151, in the city of Washington, situated between Seventeenth and Eighteenth and T and U streets northwest. The legal title passed to his heirs, while by the terms of his will the entire beneficial interest therein passed to his creditors and legatees.

In 1837 the square was sold for delinquent taxes assessed by the city aagingt the "heirs of Thomas T. Tucker," and was purchased by Joseph Abbott. The amount of the tax (for five years) was $38.76, the assessed value of the square $753, and the amount bid by Abbott $250. In 1840 Abbott, in pursuance of the purchase, received a tax deed purporting to convey to him a complete title to the square. In point of fact this deed was invalid for want of proper observance by the officers of several of the essential preliminaries in assessing, advertising, and selling. There is no reason to suppose that Abbott had knowledge or any suspicion of this invalidity. About the time of securing his deed, and as early at least as the beginning of the year 1841, Abbott took possession and had the entire square enclosed by a substantial fence and hedge. His business was that of a livery stable keeper in this city, and he purchased the ground for cultivation in connection with this business, and raised crops upon it in the year 1841. From that time until 1854 the ground was kept enclosed and cultivated each season by Abbott. In 1854 he leased the square to one Becket for a period of ten years at a yearly rental of $100. Becket kept the ground substantially enclosed and occupied, and cultivated it continuously from 1854 to 1862, in the autumn of which year a portion of the soldiers returning from the Peninsula campaign were quartered near this square and committed such depredations upon the fence, building, and crops that the lessee was compelled to discontinue its cultivation.

Abbott died in 1861, devising this square specifically to his widow, who in 1863 sold and conveyed it to A. J. Perry.

Perry did not cultivate or re-enclose the ground, but continued a man previously employed by Mrs. Abbott in

charge of the same, and occupying the small building thereon (which Becket had built in 1855 and occupied during his lease) until 1868, when he sold the entire square to Henry A. Willard, the purchase price paid being $17,600. Willard in the same year placed on file a subdivision of the square (prepared by Perry) into small lots for residence buildings, and upon the T street side erected twelve substantial dwelling houses, all of which have been continuously occupied until the commencement of this action.

In 1872 Willard sold and conveyed the portion of the square here in controversy to J. M. Latta, trustee, for the consideration of $23,864, which was then the fair market value of the ground with a good title. From Latta the title has descended by regular conveyances to the complainants in the present actions. Since Latta's purchase the premises have not been enclosed or put to any beneficial use.

Between 1840 and 1863 this square as respects its use was valuable chiefly if not exclusively for agricultural purposes. From about the latter date and until the present time the chief if not the only value of the ground has been and now is as a site for residence buildings, and it was so regarded and treated by the subsequent owners.

From 1840 to the time of commencement of this action all taxes assessed upon this square were paid in regular course by Abbott and his successors in interest.

During the same period no one of defendants nor any one claiming under Tucker has ever paid or offered to pay any of the taxes assessed, nor from the date of the tax sale in 1837 to the service of process in these actions did any one of defendants or their predecessors in interest ever assert any claim to this ground or in any way attempt to interfere with it or question the title of Abbott and his successors.

Some time before the commencement of these actions the desire of the complainants to make sales led to a thorough investigation of the title and to the discovery of the worthlessness of the tax deed as a source of title, with the consequence that they were unable to obtain any abstract of title which purchasers would acccept. Whereupon these actions were commenced against the heirs of Thomas Tudor Tucker for the purpose of having their apparent legal title declared to be a cloud upon the real title of the complainants, and of obtaining a perpetual injunction against its assertion.

The bill avers title in plaintiffs by virtue of adverse possession commenced under the invalid tax deed and continued to the filing of the bill and that the apparent record title of defendants seriously embarrassed any disposition of the property. Answers were filed by a number of the defendants denying the title of plaintiffs and asserting ownership in themselves as heirs of Tucker and without controverting the injurious effect of their outstanding claim denying that plaintiffs were entitled to equitable relief.

After the taking of evidence establishing substantially the state of facts above set forth, the court at the hearing dismissed the bill on the ground (orally stated) that without respect to the validity of their title plaintiffs were not entitled to relief in equity.

This refusal of relief and dismissal of the bill are assigned as error on the appeal.

ARGUMENT AND AUTHORITIES.

I.

The uncontroverted evidence of an actual, peaceable, visible, and uninterrupted occupation by enclosure and cultivation of these premises from the year 1840 to the year 1863 by Abbott and his successors in interest under a continuous bona fide claim of ownership, establishes a title by adverse possession complete under the most exacting judicial definitions.

The title having thus fully vested, any inquiry as to the adversary character of the acts of the successors to this title subsequent to the year 1862 is immaterial, but were this otherwise the partial occupation, payment of taxes, and constant exercise of dominion such as was usual with owners and adapted to the nature and condition of the premises during the following twenty-three years were amply sufficient, if not to originate, certainly to continue and preserve the adverse character of a possession previously commenced by actual enclosure and maintained, as here shown, visibly hostile for many years.

Ellicott *vs.* Pearl, 10 Peters, 442.
Ewing *vs.* Burnett, 11 Peters, 52.
Fletcher *vs.* Fuller, 120 U. S., 534.

II.

An adverse possession for the statutory period vests in the possessor an absolute title, equally available and potent for attack or defense as a fee simple title acquired by deed or inheritance.

Harpending *vs.* Dutch Church, 16 Peters, 455.
Leffingwell *vs.* Warren, 2 Black, 599.
Bicknell *vs.* Comstock, 113 U. S., 149.

III.

Title acquired by adverse possession will be quieted by a court of equity, under circumstances authorizing such relief to a title otherwise acquired.

Alexander *vs.* Pendleton, 8 Cranch, 462.
Arrington *vs.* Lipscomb (34 Cal., 480) 94 Am. Dec., 722.
420 Mining Co. *vs.* Bullion Mining Co., 3 Sawyer, 657.
Raynor *vs.* Lee, 20 Michigan, 384.
Liebrand *vs.* Otto, 56 Cal., 247.
Boling *vs.* Clark, 50 North W. Rep., 57.

IV.

The relation of defendants to the premises and to the complainants authorizes the latter to seek relief in equity.

Complainants' title is good, but does not so appear of record. The invalidity of the tax deed being averred in the bill and reasserted in each of the answers, the legal title appears of record to be in the defendants as heirs of Tucker. The fact that it is actually in the complainants can only be established by oral evidence, and can only be made apparent by judicial declaration. That serious damage is done to complainants by this outstanding record title is admitted by the pleadings. The plaintiffs, being in possession, have no legal remedy. Here are all the elements of equitable jurisdiction—a clear legal title in the plaintiffs—an apparent record title in the defendants, injurious to plaintiffs, and inability to obtain relief at law. In Bunce *vs.* Gallagher (*infra*), the Court, speaking of a forged deed, says: "But when such claim appears to be valid upon the face of the record and the defect can only be made to appear by extrinsic evidence, particularly if that evidence depends upon oral testimony to establish it, it presents a case for invoking

the aid of a court of equity to remove it as a cloud upon the title."

Bunce *vs.* Gallagher, 5 Blatchford, 488.

Allen *vs.* Hanks, 136 U. S., 311.

Smith *vs.* Smith (23 Wisconsin), 99 Am. Dec., 153.

Arrington *vs.* Lipscomb (34 Cal., 480), 94 Am. Dec., 722.

Holland *vs.* Mayor, &c., 11 Md., 198.

In the last case it is said to be a principle of universal application that "equity will not allow a title, otherwise clear, to be clouded by a claim which can not be enforced either in law or equity."

V.

The quieting of a title in a case like the present is not only a matter of private right, but also of public interest, cognizable by a court of equity.

In Lewis *vs.* Marshall (5 Peters, 470) this court says: "Statutes of limitation have been emphatically and justly denominated statutes of repose. The best interests of society demand that causes of action should not be deferred an unreasonable time. This remark is peculiarly applicable to land titles. Nothing so much retards the growth and prosperity of a country as uncertainty of titles to real estate." And again, in Holland *vs.* Challen (110 U. S., p. 21), this court, discussing whether a bill to quiet title could be maintained by the plaintiffs, says: "It is certainly for the interest of the State that this jurisdiction of the court should be maintained, and that causes of apprehended litigation respecting real property necessarily affecting its use and enjoyment should be removed, for so long as they remain they will prevent improvement and consequent benefit to the public. It is a matter of every day observation that many lots of land in our cities remain unimproved because of

conflicting claims to them. The rightful owner of a parcel in this condition hesitates to place valuable improvements upon it, and others are unwilling to purchase it with the certainty of litigation and possible loss of the whole."

Perhaps to no case are these remarks more pertinent than to the present. For forty-five years the plaintiffs and those from whom they have derived title have been in the peaceable, uninterrupted possession of this property. For twenty-three years they have been its absolute owners. During a period of fifty-two years they have, by the payment of taxes, discharged every obligation of owners to the public. During all this period no one has either by deed or word disturbed their possession or questioned their claim of ownership. And yet these lots are still practically unalienable and still unsubjected to any beneficial employment or use. They are so because of the lack of such assurance of title as will justify purchase or improvement. And unless this suit can be maintained this condition must continue indefinitely in the future. What prospect, what remote hope, we ask, do the facts in this record afford that this title can ever be settled in a court of law? For more than half a century no one of the defendants nor any one of their predecessors in interest has ever acted otherwise in respect to these premises than as a disinterested stranger. They have shirked all public burthens, and by their inexcusable silence and concealment of even a claim of ownership have misled others to purchase a title apparently undisputed. If the subpœna in this action did not first suggest to them their claim it certainly first, during a period of fifty years, stirred them to the resolution of avowing it. And it is a logical conclusion that, as they have not in the long past given the plaintiffs any opportunity to establish their title at law, they will not, with even less incentive because of the

hopelessness of an ejectment suit made apparent by the evidence in this case, give to them any such opportunity in the future. The denial of relief to us now and in this action, therefore, independent of the immediate injury to the plaintiffs, must also perpetuate indefinitely the unsettled condition of title which this court has pronounced injurious to public interest.

VI.

The right to maintain this action is not affected by any distinction as to the character of plaintiffs' possession at the time of the institution of these suits. It would not have occurred to us to argue or even to state this point were it not for the fact that it was made the sole basis of the decision in the court below. It was there held without any discussion or decision of any of the points hereinbefore considered, that to maintain this action the plaintiff must show an actual possession by enclosure or visible occupation as distinguished from the constructive possession which follows legal ownership, at the time of its institution, and holding that this had not been shown, the court without other reason being given, dismissed the bill.

After careful examination we have been unable to find any authority other than that of the highly respectable tribunal rendering the decision in support of the proposition. Nor can we perceive that it has any better foundation in reason than in authority. Possession as an ultimate fact is in no way a condition of equitable jurisdiction in suits of this character. There is no rule requiring any quality of possession as a preliminary to their maintenance. The reason why questions as to possession are quite frequently discussed in such cases is because of the familiar rule that equity will not entertain an application for relief when the plaintiff has an ade-

quate legal remedy. If the plaintiff, having the legal title, is out of possession, it is because some one, usually the defendant, is in possession, and having then a complete remedy in ejectment, he is not permitted to resort to equity. In respect to possession, it is not the attitude of the plaintiff but that of the defendant which determines the jurisdiction. If the defendant will neither commence an action nor disturb the premises, nothing which the plaintiff can do will authorize a test of his title at law. It is not infrequently in text books and decisions said in a general way that the plaintiff must have possession, but it is always easy to see from the context and from the application that nothing more is meant than that there must be no such hostile possession as to afford a legal remedy. In no other way and for no other reason than this have the courts in suits of this character considered the question of possession, nor for any other purpose is such a consideration relevant. In no case except this, so far as we have observed, has the distinction between actual and constructive possession been discussed in this connection.

In Holland *vs.* Challen (110 U. S. R., p. 24) Mr. Justice Field in delivering the opinion of the court has, with an habitual accuracy of definition, stated the governing principle as follows:

"No adequate relief to the owners of real property against the adverse claims of *parties not in possession* can be given by a court of law. If the holders of such claims do not seek to enforce them, the party in possession or *entitled to the possession*—the actual owner in fee—is helpless in the matter unless he can resort to a court of equity."

See, also, Lamb *vs.* Farrel (Eighth Circuit), 21st Fed. Reporter, p. 5, where the relation of possession to jurisdiction is exhaustively considered.

Proper respect for the opinion of the court below seemed to require some notice of this point, but it does not appear to us to need further discussion or citation of authorities. Plaintiffs having the legal title were in the constructive possession of the premises, and no one having interfered with this possession, they were and are "helpless in the matter unless they can resort to a court of equity."

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Office Supreme Court U. S.
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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1891.

F. W. SHARON and F. G. NEWLANDS, *Trustees, Appellants,*
vs.
J. RANDOLPH TUCKER AND OTHERS, *Appellees.*
} No. 216.

THOMAS J. FISHER, *Appellant,*
vs.
SAME, *Appellees.*
} No. 217.

Brief of Counsel for Appellees.

EPPA HUNTON,
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For Defendants.

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SAME, *Appellees.*
} No. 217.

Brief of Counsel for Appellees.

The two cases depend upon the same facts and the same principles of law and will be argued together.

The facts disclosed by the evidence are as follows:

Thomas Tudor Tucker, who was Treasurer of the United States under the administration of one of the earlier Presidents, owned the property in dispute, and died in 1828 seized and possessed of it with good fee-simple title. It did not pass under his will, but descended to his heirs-at-law.

In 1837 this property (square 151, in the city of Washington, embracing 300,000 square feet) was sold for taxes, and one Joseph Abbott became the purchaser at the price of $250 to pay the delinquent tax of $38.76, and in 1840 the said Abbott received a deed for this property.

It is admitted that this deed was absolutely invalid because the essential preliminaries in assessing, advertising, and selling had not been followed.

The testimony shows that from 1841 until about 1860 or 1861 the land was partly cultivated by some one, and it is claimed that the persons so occupying the land were tenants of Abbott.

About 1861 Federal soldiers took possession of it, destroyed every vestige of house and inclosure, and it was never reinclosed. Abbott died in 1861 and devised this property to his widow, who, without resuming possession, sold it to A. I. Perry in 1863, who did not inclose it or occupy it, but sold it to Henry A. Willard in 1868, who in the same year erected on the southern front of the square twelve houses. The residue of the square remained unoccupied and uninclosed and was sold by Willard in 1872 to J. M. Latta, trustee, from whom the appellants derived their title.

This property has not been inclosed, used, or occupied since 1861, and there has been no open, notorious, and continued possession of the same, and the appellants have never been in possession.

On this state of facts the appellants filed their bills in equity in the supreme court of the District of Columbia against the heirs of Thomas Tudor Tucker and prayed that their title to this property might be quieted, and that the defendants, the heirs of Thomas Tudor Tucker, might be forever enjoined from asserting or prosecuting judicially any claim to said premises based on the title from said Thomas Tudor Tucker.

The said equity court dismissed the bills. An appeal was taken to the general term of the supreme court of the District of Columbia. The decree of the equity court was in all things affirmed and an appeal taken to this Court.

Argument and Authorities.

I.

It is respectfully submitted that the evidence in these cases does not show such open, notorious, and continuous

possession of the land in controversy as is necessary to establish a title by adverse possession.

II.

Even if it should be considered that the complainants have established a title to the property by adverse possession, yet they are not entitled to the relief prayed for in their bill.

A party claiming title by adverse possession alone cannot maintain a bill against the original owners on the ground that their title is a cloud upon his own.

Contee *vs.* Lyons, 19 D. C., 207.
Frost *vs.* Spitley, 121 U. S., 552.

Those only who have a clear legal and equitable title to land connected with possession have any right to claim the interference of a court of equity to give them peace or dissipate a cloud on the title.

Orton *vs.* Smith, 18 How. (U. S.), 263.
Crooks *vs.* Bean, 11 Md., 173.
Marks *vs.* Mains, 4 Mackey, 559–567.
Herrington *vs.* Williams, 31 Tex., 448–460.
Holland *vs.* Challen, 110 U. S., 20.
Whitehead *vs.* Shattuck, 138 U. S., 154.
Gage *vs.* Kaufman, 133 U. S., 471.

In Frost *vs.* Spitley, 121 U. S., Mr. Justice Gray, in delivering the opinion of the Court, page 556, lays down the doctrine as follows:

"Under the jurisdiction and practice in equity independently of statute the object of the bill to remove a cloud on title and to quiet the possession to real estate is to protect the owner of the legal title from being disturbed in his possession or harassed by suits in regard to that title, and the bill cannot be maintained without clear proof *both of possession and legal title in the plaintiff.*"

The proof shows the plaintiffs are out of possession, and they admit they have no legal title under tax deed.

See also Alexander *vs.* Pendleton, 8 Cranch, 462; Piersoll *vs.* Elliott, 6 Peters, 95.

The court below in affirming the decree of the equity court followed its decision in Marks *vs.* Main, reported in 4th Mackey, 559. In this case the court decided:

"Before a court of chancery will render its aid to quiet title to real estate the plaintiff must have been in possession and the possession must have been threatened or assailed in some way, and if the title has been disputed it must have been vindicated by repeated actions at law; so if he seeks to have a cloud removed he must also have been in possession and the cloud must be with respect to something connected with his own title."

It is submitted that this decision of the district court in Marks *vs.* Main is clearly right, and when applied to the facts in these two cases the dismissal of these bills followed as a necessary consequence.

The facts in the case of Marks *vs.* Main, as stated by Mr. Justice Merrick, are as follows:

"The complainants aver themselves to be heirs-at-law of one Henry A. Jackson, who many years ago purchased a certain lot in the city of Washington and after having erected a house upon it and leaving an agent to collect the rents went away and, remaining absent for many years, died, leaving heirs-at-law. The complainants claim that they are these heirs-at-law. The defendants claim title to the property by virtue of certain conveyances from other parties, and these other parties, they allege, are the true heirs-at-law of the party who died seized of the property. In the progress of events, after the death of Jackson the property went to ruin and the possession became, in point of fact, a vacant possession, just as many of the outlying lots of the city are without tenements upon them and without inclosures."

It will be seen that the facts in the two cases are similar so far as possession is concerned.

The plaintiffs in these two cases have not been in possession, and of course such possession has not been threatened or assailed. The complainants' title has not been vindicated by repeated actions at law.

If Marks *vs.* Main was rightly decided the complainants' bills in these cases were rightly dismissed.

The counsel for complainants in their brief seek to distinguish these cases from Marks *vs.* Main by the statement that "partial occupation, payment of taxes, and constant exercise of dominion such as was usual with owners and adapted to the nature and condition of the premises during the twenty-three years following 1861 were sufficient to continue and preserve the adverse character of a possession previously commenced by actual inclosure." They refer to the following authorities to sustain this position:

Ellicott *vs.* Pearl, 10 Peters, 442.
Ewing *vs.* Burnett, 11 Peters, 52.
Fletcher *vs.* Fuller, 120 U. S., 534.

The evidence shows no act of possession of the property involved in these two suits (unless the payment of taxes can be so construed) since 1861.

Ellicott *vs.* Pearl was a writ of right and did not involve the question of chancery jurisdiction. It decides that when a party takes possession under a deed containing metes and bounds and builds on a part or incloses a part the possession is of the whole tract included in metes and bounds.

Ewing *vs.* Burnett *was an action of ejectment*, and the doctrine held (never seriously controverted) that to constitute adverse possession there need not be a fence or building, but for this purpose that visible and notorious acts of ownership are exercised over the premises.

Fletcher *vs.* Fuller was an action of ejectment. In this

case the court decides under what circumstances a deed may be presumed to have been given.

These cases have no bearing on the question of chancery jurisdiction.

The second position taken by counsel for complainants in their brief may be true, but it does not affect the jurisdictional question here involved.

The position taken in the 3d paragraph of the complainants' brief has no application to this case.

In the 4th paragraph of the brief the proposition is laid down that "the relation of defendants to the premises and to the complainants authorizes the latter to seek relief in equity."

What is this relation? The defendants hold the absolute record title to this property. The complainants' claim under tax title admitted to be invalid and is in fact absolutely void. The complainants have never been in possession, except so far as payment of taxes may constitute possession. Authorities are abundant and harmonious that payment of taxes and speaking publicly of the claim was not sufficient evidence of claim of right.

Ewing *vs.* Burnett, 11 Peters, 42.
Keefe *vs.* Bramhall, 3 Mackey, 551.

In Reed *vs.* Field, 15 Vermont, 672, it was held that a tax deed of fifty years and payment of taxes under color of tax deed was not sufficient to show even color of title without showing validity of deed. In these cases deed is admitted to be invalid.

See also Naylor *vs.* Albright, 4 Whart., page 291; Chapman *vs.* Templeton, 53 Mo., 463; 4 Watts & Serg't, 36; Jackson *vs.* Tendlon, 3 John., 388; Angell on Limitation, § 396.

The case of Bunce *vs.* Gallagher, 5th Blatch., 482, cited in brief, does not apply to these cases, because the jurisdiction in that case was placed upon fraud, the well-established ground of equitable jurisdiction.

The case of Allen *vs.* Hanks, 136 U. S., 311, was an injunction on part of a married woman to stop the sale of her land held as separate property under executions for her husband's debts. The jurisdiction was maintained on the ground that she *was in possession.*

The case of Holland *vs.* Challen, 110 U. S., 15, cited by counsel for complainants in their brief, page 7, is direct authority for the position assumed by defendants in these causes.

The relief was given in that case, but the Court expressly puts its decision on a statute of Nebraska (quoted in the opinion of Justice Field) which authorized persons *whether in possession or not* the right to file a bill in equity for the purpose of quieting title to real estate. Justice Field proceeds to give the law on the subject prior to and independent of this statute. To entitle parties to relief independent of this statute, he says, page 19: "To entitle the plaintiff to relief in such cases the concurrence of three particulars was essential. He must have been in possession of the property, he must have been disturbed by repeated actions at law, and he must have established his right by successive judgments in his favor." These three particulars do not concur in these cases—in fact, neither one exists. The old and familiar doctrine of equity has not been changed by statute in this District, and under authority of Holland *vs.* Challen the courts of equity have no jurisdiction over these cases.

Complainants' counsel, in their brief, page 9, assert that no authority can be found to support the decision of the court below. Holland *vs.* Challen is authority from this Court for the doctrine which guided the court below to its decision. Other authorities are numerous, and the following cited:

Clark *vs.* Smith, 13 Peters, 195:

This was a case from Kentucky, the legislature of which

had passed a law providing that any person who was in possession of land, having already title thereto to convene into a court of chancery any other person holding any claim of title whatsoever for the purpose of examining and determining the question of title and to remove the cloud upon the title of complainant. This Court held that under the ordinary faculty of a court of chancery this relief could not be administered, but it was competent for the legislature of Kentucky to declare what is a cloud on the title and to authorize a court of chancery to clear up any such cloud. The jurisdiction was maintained expressly on the Kentucky statute.

In Starks *vs.* Starrs (6 Wall., 409) Mr. Justice Field, in delivering the opinion of the Court, which was based upon a statute of Oregon, says:

"This statute confers a jurisdiction beyond that ordinarily exercised by courts of equity to afford relief in the quieting of title and possession of real property. By the ordinary jurisdiction of those courts suits would not lie for that purpose unless the possession of the plaintiff had been previously disturbed by legal proceedings on the part of the defendant and the right of the plaintiff had been sustained by successive judgments in her favor."

Phelps *vs.* Harris, 101 U. S., 370:

In this case Mr. Justice Bradley, in delivering the opinion of the Court, again affirms that the ordinary jurisdiction of courts of equity, not enlarged by statute, does not embrace cases of this kind.

In 3d volume Pomeroy's Equity Jurisprudence (§ 1396) the doctrine is thus laid down:

"The equity jurisdiction to quiet title independent of statute was only invoked by a plaintiff *in possession*, holding the legal title when successive actions at law—all of which had failed—were brought against him by a single person out of possession or when many persons asserted

equitable titles against a plaintiff in possession holding the legal or equitable title."

See also United States *vs.* Wilson, 118 U. S., 88.

These authorities sustain the decision of the court below, and it is believed that no case can be found which lays down a doctrine in conflict with it.

It is respectfully submitted that the decree in these cases in the court below should be affirmed.

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